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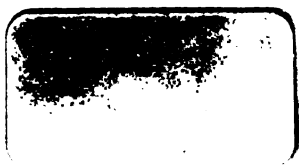
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CORPORATION CODE
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NORTH CAROLINA CORPORATION CODE

ANNOTATED.

CONTAINING THE STATUTES AFFECTING PRIVATE CORPORATIONS AS AMENDED BY THE EXTRA SESSION OF THE GENERAL ASSEMBLY OF 1921 AND THE CONSTRUCTION OF THESE STATUTES BY THE COURTS PRIOR TO JANUARY 1, 1922, TOGETHER WITH VARIOUS CORPORATE FORMS.

BY
POU, BAILEY & POU,
and
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of the Bar of
RALEIGH, N. C.

ATLANTA
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INTRODUCTION.

The purpose of this work is to contain in a single volume, in compact and concise form, the laws relating to the creation and internal management of corporations, with the leading cases from the North Carolina Supreme Court and from the United States Supreme Court, the Circuit Court of Appeals, and the United States District Court, decided under these laws. The statutes include the amendments made by the Extra Session of the General Assembly of 1921. The decisions of the courts rendered before January 1, 1922, are included.

The work contains two parts. Part One includes Chapter 22 of the Consolidated Statutes relating to the organization and management of private corporations, together with certain sections from the Chapters in the Consolidated Statutes on Civil Procedure, Conveyances, Liens and Attachment, which relate to corporations. Sections not directly related to the organizations of corporations or their management, but which affect corporations in a general way, are grouped together. Under this group we have arranged the Child Welfare Laws, the laws declaring the criminal liability of corporations, their officers and employees, the laws setting forth a corporation's duty to its employees, and other sections of like nature.

Following in order are the laws against Monopolies and Trusts, the laws governing Banks and Banking, Negotiable Instruments, Co-operative Organizations, Drainage by Corporations, Rural Communities, Warehouses, the organization of and requisites for doing business by Railroads and Insurance Companies, the organization of Municipal Corporations, and the Municipal Finance, and Taxation.

Part Two contains various corporate forms and suggestions for their use. We have endeavored to give forms for all transactions that may arise during the existence of a corporation from its organization to its dissolution.

The present North Carolina corporation law was taken from the laws of several of the leading industrial states and was adopted in 1901. For this reason we have paid particular attention to the decisions rendered after that date and have deemed it wise not to cite cases decided before that time and encumber the book with explanations of the differences between the present and the

former law. In a few instances we have cited cases decided under the old law that appear to us to be of special importance and not in conflict with the present law. It will be noted that the decisions cited include the construction of North Carolina statutes by the Federal Courts as well as the State Court.

We are greatly indebted to the West Publishing Company, of St. Paul, Minn., for allowing us the free use of its reports and digests. We have in many instances copied paragraphs from its digests and head-notes from its reports verbatim and that company deserves the credit for the clear and concise manner in which these paragraphs are written. This company also granted us permission to refer to its American Digest Classification, the Key Number System, in annotating the book by use of its topical numbers. Thus the digest of a case cited here will be preceded by a topical number that will refer to cases containing similar points decided by the courts of last resort throughout the United States and reported and digested by West Publishing Company. These references can be used to advantage in connection with the Southeastern Reporter Digest, beginning with the fourth volume, the Southeastern Reporter beginning with the sixty-third volume, and the Decennial Digest.

We take pleasure in calling the attention of the North Carolina Bar to the courtesies extended us by the West Publishing Company.

POU, BAILEY & POU,
J. L. EMANUEL.

Raleigh, N. C., January, 1922.

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EXPLANATIONS.

The topical number appearing before each citation refers to cases containing similar points digested under the American Digest Classification, the Key-Number System.

ABBREVIATIONS.

C. C. A.	United States Circuit Courts of Appeals Reports.
C. C. P.	Clark's Code of Civil Procedure.
Code	North Carolina Code of 1883.
Ex. Session	Extra Session of North Carolina General Assembly.
Fed.	Federal Reporter.
Law. Ed.	United States Supreme Court Reports, Lawyers' Edition.
N. C.	North Carolina Reports.
N. C. Const.	North Carolina Constitution.
Rev.	North Carolina Revisal of 1905.
S. E.	Southeastern Reporter.
S. Ct.	United States Supreme Court Reporter.
U. S.	United States Supreme Court Reports.

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CHAPTER I.

CORPORATIONS.

All of Chapter 22 of the Consolidated Statutes and certain sections from the Chapters on Civil Procedure, Conveyances, Liens and Attachment.

ART. 1. DEFINITIONS.

1. Definitions. The following words and phrases where used in this chapter, unless differently defined or described, have the meanings and references stated below:

1. "Corporation" refers to a corporation which may be created and organized under this chapter, or under any other general or any special act.

Corporations § 32. Individuals associated together in a business, and claiming to be a corporation, and exempt from individual liability for the contracts of the association, in order to shield themselves from such liability, must be able to show that this legal entity exists by virtue of some special or general act of a legislative body capable of chartering—giving life to a corporation. There must be a charter.—*Hanstein v. Johnson*, 112 N. C. 253, 17 S. E. 155.

Note. When this decision was rendered corporations could be created either by act of General Assembly or in certain instances by the clerk of the superior court under the general law authorizing clerks of courts to issue charters to certain classes of corporations. In 1901 the authority to grant charters was withdrawn from the clerks of the superior court and conferred on the secretary of state. An amendment to the constitution withdrew from the general assembly in 1915 the power to grant charters, except for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the state.

2. "Certificate of incorporation" is the instrument filed by the incorporators and by which the corporation is formed.

3. The words "special act" refer to the act of the legislature enacted for the purpose of creating the corporation.

4. The word "charter" means either "certificate of incorporation" or "special act," together with all appropriate parts of this chapter and its amendments.

5. "Court," "superior court," or "judge of the superior court" means the judge of the superior court resident in the district or holding the courts of the district in which the corporation affected has its principal place of business.

6. "Receiver" as used in this chapter includes receivers and trustees appointed by the court, as herein provided.

C. S., s. 1113; Rev., ss. 1136, 1222, 1247; Code, s. 668; 1901, c. 2, ss. 7, 74, 111.

Corporations § 130. Judge of superior court, having jurisdiction, may appoint receiver to wind up affairs of insolvent corporation. The receiver may sue in his name or in the name of the corporation to collect assets of the corporation and have adjudicated in such suits all legal and equitable matters touching the rights of the corporation, its creditors and debtors.—*Smathers v. Western Carolina Bank*, 135 N. C. 410, 47 S. E. 893.

Riley & Co. v. Sears & Co., 154 N. C. 509, 70 S. E. 997.

ART. 2. FORMATION.

2. How created. Three or more persons who desire to engage in any business, or to form any company, society, or association, not unlawful; except railroads, other than street railways, or banking or insurance, or building and loan associations, may be incorporated in the following manner only (except corporations created for charitable, educational or reformatory purposes that are to be and remain under the patronage and control of the state): Such persons shall, by a certificate of incorporation, under their hands and seals, set forth—

1. The name of the corporation. No name can be assumed already in use by another domestic corporation, or so similar as to cause uncertainty or confusion, and the name adopted must end with the word "company," "corporation," or "incorporated."

Corporations § 49. The defendants have the right not only to use the use of its corporate name and when so acquired, its use will be protected by injunction.—*Blackwell's Durham Tobacco Co. v. American Tobacco Co.*, 145 N. C. 367, 593 S. E. 123.

Corporations § 49. A domestic corporation did not acquire by the mere adoption of a corporate name the exclusive right to use the same or such a property right as would be protected by injunction in the absence of actual user.—*Ibid.*

Corporations § 654. Where a foreign corporation and a domestic corporation have the same corporate name, the latter cannot, it would seem, sue to enjoin the former from using such name within the state and doing business therein, unless the corporate rights of the domestic corporation were in existence before the foreign corporation committed the acts against which relief is sought.—*Ibid.*

Corporations § 49. The defendants have the right not only to use the name "The William Bingham School" but also, if they desire, the name "Bingham School" together with the statement "Established in 1793."—*Bingham School v. Gray*, 122 N. C. 699, 30 S. E. 304.

The incorporating act of 1895 did not have the effect of creating a trade mark of the Bingham name and of confining the exclusive right to use it in connection with school purposes upon that corporation.—*Ibid.*

Nor is it a prohibition upon all others named Bingham, whether of that family or of any other of that same name, against using the name in connection with any school they might establish.—*Ibid.*

2. The location of its principal office in the state.

Corporations § 503. The phrase "principal place of business" and "principal office" are synonymous.—*Roberson v. Greenleaf-Johnson Lumber Co.*, 153 N. C. 120, 68 S. E. 1064; *Garrett v. Bear*, 144 N. C. 23, 56 S. E. 479; *Simmons v. Steamboat Co.*, 113 N. C. 147, 18 S. E. 117.

3. The object or objects for which the corporation is to be formed.

Corporations § 596. The fact that a corporation does not exercise all its corporate privileges does not avoid its incorporation.—*Wadesboro Cotton Mills Co. v. Burns*, 114 N. C. 353, 19 S. E. 238.

4. The amount of the total authorized capital stock, the number of shares into which it is divided, the par value of each share, the amount of capital stock with which it will commence business, and, if there is more than one class of stock, a description of the different classes. The provisions of this subsection shall not apply to religious, charitable, or literary corporations, unless they desire to have a capital stock. If they desire to have no capital stock, that fact and the conditions of membership shall be stated.

Note. If the purpose be to issue shares of stock without par value under the Act of 1921, chapter 116, the method hereinafter described in section 88 should be followed.

5. The names and postoffice addresses of the subscribers for stock and the number of shares subscribed for by each; the aggregate of the subscriptions shall be the amount of capital with which the corporation will commence business. If there is to be no capital stock, the certificate must contain the names and postoffice addresses of the incorporators.

The articles of agreement filed with the clerk, and upon which articles of incorporation are to be issued, are to contain: The corporation name; the business proposed; the place where it is proposed to be carried on; the length of time desired; the names of the persons who have subscribed; the amount of the capital; and the number of shares and the amount of each.—*Wilson Cotton Mills v. Randleman Cotton Mills*, 115 N. C. 475, 20 S. E. 770.

6. The period, if any, limited for the duration of the corporation.

Corporations § 37. A corporation cannot endure longer than the time prescribed by its charter, and no judicial proceedings are necessary to declare a forfeiture for such cause.—*Asheville Division, Sons of Temperance v. Aston*, 92 N. C. 579.

7. The certificate of incorporation may also contain any provision, consistent with the laws of this state, for the regulation of the affairs of the corporation, or creating, defining, limiting and regulating its powers, directors, and stockholders, or any class or classes of the latter.

C. S., s. 1114; Rev., s. 1137; Code, s. 677; 1885, cc. 19, 190; 1889, c. 170; 1891, c. 257; 1893, cc. 244, 318; 1897, c. 204; 1899, c. 618; 1901, c. 2, s. 8, cc. 6, 41, 47; 1903, c. 453; 1911, c. 213, s. 1; 1913, c. 5, s. 1; Const., Art. 8, s. 1; 1920, c. 55.

3. Corporations under general laws. No corporation shall be created nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the state; but the general assembly shall provide by general laws for the chartering and organization of all corporations and for amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general laws and special acts may be altered from time to time or repealed; and the general assembly may at any time by special act repeal the charter of any corporation.

Article 8, section 1, N. C. Constitution.

1915, c. 99. In effect January 10, 1917. No cases decided prior to that date cited.

Statutes § 80. Section applies only to private corporations, not to public or quasi public corporations, acting as governmental agencies.—*Kornegay v. City of Goldsboro*, 180 N. C. 441, 105 S. E. 187.

Statutes § 77. An act which applies to all the municipal corporations of a named county, including cities, towns, villages, and school districts, is not a "special act," within the meaning of the Constitution.—*Ibid*.

Statutes § 80. Amending charter of school district not prohibited by Constitution.—*Dickson v. Brewer*, 180 N. C. 403, 104 S. E. 887.

Board of Education v. Board of County Commissioners, 174 N. C. 47, 93 S. E. 383.

4. What corporations shall include. The term "corporation," as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

Article 8, section 3, N. C. Constitution.

The term "corporation" shall include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships.—*Hanstein v. Johnson*, 112 N. C. 253, 17 S. E. 155.

5. Requirements as to certificate of incorporation. The certificate of incorporation shall be signed by the original stock subscribers, or a majority of them, and must be acknowledged before an officer duly authorized under the laws of this state to take the

proof or acknowledgment of deeds. The certificate shall then be filed in the office of the secretary of state, and there remain of record, and he shall, if it is in accordance with law, cause it to be recorded in his office in a book to be kept for that purpose and known as the Corporation Book. Upon the payment of the organization tax and fees, the secretary of state shall certify under his official seal a copy of the certificate of incorporation and probates, which certified copy shall be forthwith recorded in the office of the clerk of the superior court of the county where the principal office of the corporation in this state is, or is to be, established, in a book to be known as the Record of Incorporations. The certificate, or a copy thereof, duly certified by the secretary of state, or by the clerk of the superior court of the county in which it is recorded, is evidence in all courts and places, and in all judicial proceedings is prima facie evidence of the complete incorporation and organization of the corporation purporting thereby to have been established.

C. S., s. 1115; Rev., s. 1139; Code, ss. 678, 679, 682; 1901, c. 2, s. 9; 1903, c. 343.

Corporations § 16. Where incorporators complied with the requirements of the law as to the form of the articles, and, after execution, caused them to be properly recorded as required, they thereby became a corporation, though no stock was ever issued.—Powell Bros. v. McMullan Lumber Co., 153 N. C. 52, 68 S. E. 926.

Corporations § 29. A purchaser of land from a corporation cannot question its incorporation because the charter was not registered with the proper officer, where there was a valid statute under which it might have been organized, and there was a bona fide attempt to organize under the statute, coupled with an actual user of the corporate powers, for such a corporation is a *de facto* corporation, entitled, as against individuals, to exercise all the powers of a corporation *de jure*.—Claremont College v. Riddle, 165 N. C. 211, 81 S. E. 283.

Corporations § 32. Certified copies of letters of incorporation are prima facie evidence of such incorporation.—Marshall v. Macon County Savings Bank, 108 N. C. 639, 13 S. E. 182.

6. When incorporators become corporation. From the date the certificate of incorporation is filed in the office of the secretary of state, the stock subscribers, their successors and assigns, are a body corporate by the name specified in the certificate, subject to amendment and dissolution as provided in this chapter.

C. S., s. 1116; Rev., s. 1140; 1901, c. 2, s. 10.

Corporations § 24. Where incorporators complied with the requirements of the law as to the form of the articles, and, after execution, caused them to be properly recorded as required, they thereby became a corporation, though no stock was ever issued or by-laws adopted.—Powell Bros. v. McMullan Lumber Co., 153 N. C. 52, 68 S. E. 926.

Corporations § 24.—When a corporation is formed under the general law,

by the signing of the articles of agreement and the due recording thereof, the incorporators become a body politic for the purposes set forth in the agreement.—*Benbow v. Cook*, 115 N. C. 325, 20 S. E. 453.

Corporations § 24. The acceptance of a franchise conferred by statute is sufficiently evidenced by the signature of all the stockholders to the articles of agreement.—*Ibid*.

7. Incorporators act until directors elected. Until directors are elected the signers of the certificate of incorporation shall have the direction of the affairs of the corporation, and may take proper steps to obtain the necessary subscription to stock and to perfect the organization of the corporation.

C. S., s. 1117; Rev., s. 1141; 1901, c. 2, s. 11.

Corporations § 180. The management of the affairs of a corporation until the directors are elected is vested entirely in the subscribers.—*Boushall v. Myatt*, 167 N. C. 328, 83 S. E. 352.

Corporations § 180. Under the provision that the persons associated shall constitute a corporation from the time of filing a proper certificate, and the above section, giving the signers of the certificate temporary powers as directors, it is no objection to the obtaining of a right of way by a street railway that its capital stock has not yet been issued and that no money has been paid thereon.—*Fayetteville St. Ry. v. Aberdeen & Rockfish R. Co.*, 142 N. C. 423, 55 S. E. 345.

8. First meeting; notice. The first meeting of every corporation shall be called by a notice, signed by a majority of the incorporators, designating the time, place, and purpose of the meeting, which notice shall be published at least two weeks before the meeting, in a newspaper of the county where the corporation is established; or the meeting may be called without publication, if two days notice is personally served on all the incorporators; or if all the incorporators in writing waive notice and fix a time and place of meeting, no notice or publication is required.

C. S., s. 1118; Rev., s. 1142; Code, s. 665; 1901, c. 2, s. 18.

Corporations § 194. The compliance with the requirement that the first meeting of a corporation be called by notice signed by one or more of the incorporators, is unnecessary if the meeting is attended by all the stockholders.—*Benbow v. Cook*, 115 N. C. 325, 20 S. E. 453.

First meeting held out of the state: *Tuchaseegee Mining Co. v. Goodhue*, 118 N. C. 981, 24 S. E. 797.

9. Death of incorporators; vacancy filled. When one or more of the incorporators of any corporation die before the corporation has been organized pursuant to law, the survivor or survivors may, in writing, designate others who may take the place and act instead of the deceased, in the organization; and the organization so effected by their aid is as effectual in law as if it had been effected by all the original incorporators.

C. S., ss. 1119; Rev., s. 1143; 1901, c. 2, s. 36.

10. Errors or omissions in certificate of incorporation. Whenever in the certificate of incorporation under any general law there is an error or omission in the recital of the act under which the corporation is created or an error or omission of any matter required to be stated therein, it is lawful for the corporation to correct the error or supply the omission in the following manner: The board of directors shall pass a resolution declaring that the error or omission exists and that the corporation desires to correct it, and shall call a meeting of the stockholders to take action upon the resolution. The stockholders' meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days notice, given personally or by mail. If two-thirds in interest of all the stockholders vote in favor of the correction of the error or omission, a certificate of their action shall be made and signed by the president and secretary under the corporate seal; which certificate shall be acknowledged as in the case of deeds of real estate, and, together with the written consent in person or by proxy of two-thirds in interest of all the stockholders of the corporation, shall be filed in the office of the secretary of state. Upon the filing thereof, in conformity with this section, the certificate of incorporation has the same force and effect as if it had been originally drafted in conformity with the amendment so made.

C. S., s. 1120; Rev., s. 1144; 1901, c. 2, s. 109.

11. Street railways. Corporations may be organized under the provisions of this chapter for the purpose of building, maintaining or operating street railways. The term street railways, wherever used in this chapter, includes railways operated either by steam or electricity, or other motive power, used and operated as means of communication between different points in the same municipality, or between points in municipalities lying adjacent or near to each other, or between the municipality in which is the home office of the company and the territory contiguous thereto, and such railways may carry and deliver freights. No such railway may operate a line extending in any direction more than one hundred miles from the municipality in which is located its home office, or in any city or town without the consent of the municipal authorities thereof.

C. S., s. 1121; Rev., s. 1138; 1901, cc. 6, 41; 1903, c. 350; Ex. Sess. 1913, c. 70, s. 1.

Street Railways discussed: Fayetteville Street Railway v. Aberdeen & Rockfish R. Co., 142 N. C. 423, 55 S. E. 345.

Eminent Domain § 10. It was no objection to a traction company's exercise of the power of eminent domain, conferred by its charter that it was also authorized to engage in private business.—*Wadsworth Land Co. v. Piedmont Traction Co.*, 162 N. C. 314, 78 S. E. 297.

Eminent Domain § 120. The construction of a street railroad does not impose an additional servitude on the property fronting on the street so occupied, though in the original laying out of the street a mere easement was taken, and not the fee.—*Hester v. Durham Traction Co.*, 138 N. C. 288, 50 S. E. 711.

Municipal Corporations § 425. The property and franchise of street railways laid along a street within the effects and benefits of a local improvement may be assessed under the principle relating to abutting owners.—*City of Durham v. Durham Public Service Co.*, 182 N. C. 133, 109 S. E. 40.

12. Security selling companies. Corporations may be formed under the provisions of this chapter to conduct the business of selling securities and bonds of any kind, including its own bonds and choses in action, on the partial payment, installment, or other plan of payment, and to loan money on mortgage, personal, or other security, and to collect interest in advance on the same, and to charge a fee of \$1 for investigating the loan, but no fee shall be charged for a renewal of the loan. A corporation chartered by another state or by a foreign state, kingdom, or government, having in its charter the power to conduct the business described in this section, may become domesticated in this state in the manner and upon the terms and conditions provided in section 1181 (herein 113) under this chapter; but such company must also file with the secretary of state a statement, verified by its president and secretary, showing that its paid-up cash capital is at least \$100,000 and that it has complied with all the requirements of the laws of the state of its creation. The business of such corporation in this state is restricted to the business described in this section. Such corporation is liable to pay the franchise tax imposed by section 7861 (herein 896) under the chapter entitled Taxation, and also an ad valorem tax on all of its real and personal property situate in this state. No foreign corporation domesticated under this section is required to pay any other taxes or license fees than those named herein.

C. S., s. 1122; 1909, c. 502; 1915, c. 180.

13. Public parks and drives. Three or more persons may be incorporated under this chapter for the purpose of creating and maintaining public parks and drives. It is not necessary, however, to set forth in the certificate of incorporation of any corporation

created for such purpose the amount of authorized capital stock, the number of shares into which the same is divided, the par value of such stock, or the amount of capital stock with which it will commence business. Any corporation created hereunder shall have full power and authority to lay out, manage, and control parks and drives within the state, under such rules and regulations as the corporation may prescribe, and shall have power to purchase and hold property and take gifts or donations for such purpose. It may hold property and exercise such powers in trust for any town, city, township, or county, in connection with which said parks and drives shall be maintained. Any city, town, township, or county, holding such property, may vest and transfer the same to any such corporation for the purpose of controlling and maintaining the same as public parks and drives under such regulations and subject to such conditions as may be determined upon by such city, town, township, or county. All such lands as the corporation may acquire shall be held in trust as public parks and drives, and shall be held open to the public under such rules, laws, and regulations as the corporation may adopt through its board of directors; and it shall have power and authority to make and adopt all such laws and regulations as it may determine upon for the reasonable management of such parks and drives. All property owned by it and appropriated exclusively for public parks and drives shall not be subject to taxation, and no such corporation shall be liable in damages on account of the construction or maintenance of any such parks or drives.

C. S., s. 1123; 1911, c. 155, ss. 1, 2, 3, 4.

14. Word "trust" in corporate name. No corporation may be chartered under the laws of North Carolina with the word "trust" as a part of its name except those reporting to and under the supervision of the corporation commission; nor may any corporate name be amended to include the word "trust" unless the corporation is under such supervision.

C. S., s. 1124; 1915, c. 196, s. 2.

15. Trust companies and word "trust." No person, firm, association or corporation domiciled in the state of North Carolina, except corporations reporting to and under the supervision of the corporation commission of this state, may therein advertise any sign as a trust company or in any way solicit or receive deposits or transact business as a trust company, or use the word "trust" as a part of his or its name or title. This section shall not prevent any individual, as such, from acting in any trust capacity as here-

tofore. A violation of this section is a misdemeanor, and on conviction the offender shall be fined not exceeding five hundred dollars for each offense: Provided, however, that it shall be lawful for any corporation incorporated prior to January 1, 1905, to retain the word "trust" in the name of said corporation, though it does not transact a banking business or such other business as requires its examination by the corporation commission.

C. S., s. 1142; 1915, c. 196, s. 3; 1919, c. 108.

16. Certain religious, etc., associations deemed incorporated. In all cases where a religious, educational or charitable association has been formed prior to January first, one thousand eight hundred and ninety-four, and has since said date been acting as a corporation, exercising the powers and performing the duties of religious, educational or charitable corporations as prescribed by the laws of this state, then such association shall be conclusively presumed to have been duly and regularly organized and existing as a corporation under the laws of this state on January first, one thousand eight hundred and ninety-four, and all of its acts as a corporation from and after said date, if otherwise valid, are hereby declared to be valid corporate acts: Provided, this act shall not apply to any pending litigation.

C. S., s. 1125; 1919, c. 137.

ART. 3. POWERS AND RESTRICTIONS.

17. Express powers. Every corporation has power—

1. To have succession, by its corporate name, for the period limited in its charter, and when the charter contains no time limit, for a period of sixty years.

Corporations § 37. A corporation cannot endure longer than the time prescribed by its charter, and no judicial proceedings are necessary to declare a forfeiture for such a cause, but for any other cause of forfeiture a direct proceeding must be instituted by the sovereign to enforce the forfeiture, and it cannot be taken advantage of in any collateral proceeding.—*Asheville Division, Sons of Temperance v. Aston*, 92 N. C. 579.

Corporations § 37. Although the existence of a corporation be limited to a certain number of years, yet it is capable of holding estates in fee.—*Ibid.*

2. To sue and be sued in any court.

C. S., s. 1126; Rev., s. 1128; Code, ss. 663, 666, 691; 1893, c. 159; 1901, c. 2, s. 1; 1909, c. 507, s. 1.

Corporations § 210. A suit against a corporation must be brought in its corporate name, and not against its officers or agents.—*Young v. Barden*, 90 N. C. 424; *Brittain v. Newland*, 19 N. C. 363; *Mauney v. Mfg. Co.*, 39 N. C. 195.

States § 191. Where a prison guard was injured by falling from a defective ladder, he cannot maintain an action for damages against the state's prison, since such an action would be, in effect, an action against the state to recover for a tort of its agents, and on grounds of public policy such an action cannot be permitted.—*Moody v. State's Prison*, 128 N. C. 12, 38 S. E. 131.

18. Domestic corporations. For the purpose of suing and being sued the principal place of business of a domestic corporation is its residence.

C. S., s. 466; Rev., s. 422; 1903, c. 806.

Corporations § 503. An action by a domestic corporation should have been brought in the county in which it had its principal place of business.—*Atlantic Coast Line R. Co. v. Spencer*, 166 N. C. 522, 82 S. E. 851.

Corporations § 503. The phrase "principal place of business" is synonymous with the words "principal office."—*Rackley v. Rowland Lumber Co.*, 153 N. S. 171, 69 S. E. 56.

Corporations § 503. Every corporation must maintain its principal office in some county within the state, which fixes its residence for the purposes of suing and being sued, even though its charter permits it to have its principal office at a place out of the state.—*Roberson v. Greenleaf-Johnson Lumber Co.*, 153 N. C. 120, 68 S. E. 1064.

Corporations § 503. An action is properly brought by a domestic corporation in the county where it is required to hold its directors' and stockholders' meetings.—*Garrett & Co. v. Bear*, 144 N. C. 23, 56 S. E. 479.

Statute mentioned in *Wofford-Fain v. Hampton*, 173 N. C. 686, 92 S. E. 612.

19. Foreign corporations. An action against a corporation created by or under the law of any other state or government may be brought in the superior court of any county in which the cause of action arose, or in which the corporation usually did business, or has property, or in which the plaintiffs, or either of them, reside, in the following cases:

1. By a resident of this state, for any cause of action.
2. By a nonresident of this state in any county where he or they are regularly engaged in carrying on business.
3. By a plaintiff, not a resident of this state, when the cause of action arose or the subject of the action is situated in this state.

C. S., s. 467; Rev., s. 423; Code, s. 194; C. C. P., s. 361; 1876-7, c. 170; 1907, c. 460.

Courts § 14. A transitory action may be maintained against a foreign corporation by a nonresident on a cause of action arising out of the state, the statute having been taken from the statute law of New York, where it was construed as not containing any prohibition of such action.—*Ledford v. Western Union Telegraph Co.*, 179 N. C. 63, 101 S. E. 533.

Venue § 5. An action for determination of an "estate or interest in real property" held properly removed to the county where the property was situated.—*Henrico Lumber Co. v. Dare Lumber Co.*, 180 N. C. 12, 103 S. E. 915.

Courts § 7. The Superior Court in North Carolina has jurisdiction of an action against a North Carolina railroad company for injuries in another state to a shipment in the hands of the connecting carrier, under section 1500 of Revisal of 1905, declaring that the superior court has original jurisdiction of all civil actions, where not given to some other court, for the action is a transitory one.—*MacGovern & Co. v. Atlantic Coast Line R. Co.*, 180 N. C. 219, 104 S. E. 534.

Corporations § 661. A foreign corporation incorporated to do business in North Carolina, and domesticated in that state by compliance with its laws, may sue therein, though it has no power to do business in the state of its incorporation.—*Troy & North Carolina Gold Mining Co. v. Snow Lumber Co.*, 173 N. C. 593, 92 S. E. 494.

Corporations § 666. A foreign corporation may be sued either in the county in which the cause of action arose or the county in which plaintiff resides.—*Hannon v. Southern Power Co.*, 173 N. C. 520, 92 S. E. 353.

Corporations § 666. The venue of an action by one foreign corporation against another, to recover for trespass and the wrongful removal and sale of timber from plaintiff's land, is in the county where the cause of action arose, and not in another county where defendant does not usually do business or have property, and where plaintiff does not reside.—*Richmond Cedar Works v. J. L. Roper Lumber Co.*, 161 N. C. 603, 77 S. E. 770.

The superior court does not have jurisdiction of an action on a contract for less than \$200.00, brought by a resident of this state against a foreign corporation.—*Howard v. Mutual Reserve Fund Life Ass'n*, 125 N. C. 49, 34 S. E. 199.

20. Actions against railroads. In all actions against railroads the action must be tried either in the county where the cause of action arose or where the plaintiff resided at that time, or in some county adjoining that in which the cause of action arose, subject to the power of the court to change the place of trial as provided by statute.

C. S., s. 468; Rev., s. 424.

See cases under preceding section.

Removal to Federal Court. The Federal Judicial Code, chapter 3, sections 28 to 39, which went into effect January 1, 1912, controls the removal of causes from the state to the federal courts. These sections provide that no removal can be had unless the amount involved exceeds three thousand dollars, exclusive of interest.

To accomplish removal on the ground of diversity of citizenship, the petitioner must set out the right thereto, duly verified by the removant, or some agent or officer authorized to make verification, and file in the court from which removal is desired before the expiration of the time prescribed by law for filing answer, which is twenty days after the return day of the summons, or twenty days after service of summons with copy of complaint. A bond must be given by removant for the sum of five hundred dollars, with sufficient surety, to be approved by the court, and conditioned that removant shall pay the cost incident to the removal in the event the court shall hold that removal is improper. Petition for removal on the ground of local prejudice may be filed at any time before trial. Written notice of the petition and bond for removal must be given the adverse party or parties but the statute does not prescribe the length of time for which notice must be given.

Cases decided by the supreme court of North Carolina since the New Judicial Code was adopted January 1st, 1912, are:

North Carolina Public Service Co. v. Southern Power Co., 180 N. C. 335, 104 S. E. 872.

Erskine Motor Co. v. Chevrolet Motor Co., 180 N. C. 619, 105 S. E. 420.

Powell v. Watkins, 172 N. C. 244, 90 S. E. 207.

Hollifield v. Telephone Co., 172 N. C. 714, 90 S. E. 996.

Gurley v. Southern Power Co., 173 N. C. 447, 92 S. E. 262.

First National Bank v. Pancake, 172 N. C. 513, 90 S. E. 515.

Patterson v. Champion Lumber Co., 175 N. C. 90, 94 S. E. 692.

Dills v. Champion Fiber Co., 175 N. C. 49, 94 S. E. 694.

Cogdill v. Clayton, 170 N. C. 526, 87 S. E. 338.

Fore v. Sylva Tanning Co., 175 N. C. 583, 96 S. E. 48.

Lloyd v. North Carolina R. Co., 162 N. C. 485, 78 S. E. 489.

Cox v. Atlantic Coast Line R. Co., 166 N. C. 652, 82 S. E. 979.

Ford v. Pigeon River Lumber Co., 155 N. C. 352, 71 S. E. 439.

Pruitt v. Charlotte Power Co., 165 N. C. 416, 81 S. E. 624.

Rea v. Standard Mirror Co., 158 N. C. 24, 73 S. E. 116.

Hurst v. Southern Ry. Co., 162 N. C. 368, 78 S. E. 434.

Hyder v. Southern Ry. Co., 167 N. C. 584, 83 S. E. 689.

Smith v. Harris Granite Quarries Co., 164 N. C. 338, 80 S. E. 388.

Brinkley v. John L. Roper Lumber Co., 166 N. C. 501, 82 S. E. 855.

Herrick v. Norfolk-Southern R. Co., 158 N. C. 307, 73, S. E. 1008.

21. Service by copy. The summons shall be served by delivering a copy thereof in the following cases:

1. If the action is against a corporation, to the president or other head of the corporation, secretary, cashier, treasurer, director, managing or local agent thereof. Any person receiving or collecting money in this state for a corporation of this or any other state or government is a local agent for the purpose of this section. Such service can be made in respect to a foreign corporation only when it has property, or the cause of action arose, or the plaintiff resides, in this state, or when it can be made personally within the state upon the president, treasurer, or secretary thereof. (Paragraphs two and three of this section do not apply to corporations).

C. S., s. 483; Rev., s. 440; Code, s. 217; C. C. P., s. 82; 1874-5, c. 168; 1889, c. 89.

Railroads § 5½. A railroad company, though in the hands of the director general of railroads acting by appointment and official proclamation of the president, is a proper party to an employee's suit against it and the director general, and service of process on a local agent as provided above,

is service on the director general, and also on the company.—*Clements v. Southern Ry. Co.*, 179 N. C. 225, 102 S. E. 399.

Corporations § 668. Service can be had on a foreign corporation engaged in repairing an electric light and street car plant by service on one who had oversight of all the work, and had general charge of the employees of the company, and acted as its superintendent of construction.—*Clinard v. White*, 129 N. C. 250, 39 S. E. 960.

Corporations § 668. Under the provision allowing service of summons on a foreign corporation when it can be made in the state personally on the president thereof, it is immaterial that he is in the state on private business, and that he is not at the time actually engaged in the service of the corporation.—*Jester v. Baltimore Steam Packet Co.*, 131 N. C. 54, 42 S. E. 447.

(In connection with this case consider that of *Menefee v. Riverside Cotton Mills*, 161 N. C. 164, 76 S. E. 741, as reversed by U. S. Supreme Court, 237 U. S. 189, 59 Law. Ed. 910, 35 S. Ct. 579.)

Corporations § 668. Local operator of defendant telegraph company, who is in sole charge of defendant's property at the place, who receives and sends messages to and from ships at sea for pay, is defendant's local agent; the provision that any person receiving or collecting moneys in the state for any corporation shall be deemed a local agent for the purpose of the section not being intended to limit, but to extend, the meaning of the term "local agent."—*Copland v. American De Forest Wireless Telegraph Co.*, 136 N. C. 11, 48 S. E. 501.

Corporations § 668. The legislature may provide for service of process on foreign corporations doing business in the state. The statutes providing for the service of process on foreign corporations doing business in the state are considered a condition upon which they may do such business, and which they are deemed to have assented to.—*Whitehurst v. Kerr*, 153 N. C. 76, 68 S. E. 913.

Corporations § 668. Where a state has established by statute a method of personal service on foreign corporations doing business therein, reasonably calculated to give full notice, a corporation doing business in the state will be taken to have accepted as valid the method provided.—*Oliver v. U. S. Fidelity & Guaranty Co.*, 174 N. C. 417, 93 S. E. 948.

Judgment § 17. A state court is without jurisdiction to render a judgment against a non-resident defendant in a suit in personam on a notice directed to such defendant, where the return recites nonresidence of the defendant and service without the state, and defendant did not appear in the suit.—*Hinton v. Penn Mutual Life Ins. Co.*, 126 N. C. 18, 35 S. E. 182.

Corporations § 668. Service on a resident director of a foreign corporation which has no property within the state and does not do business therein, where the plaintiff is a resident of the state, will bind such corporation and confer jurisdiction upon the state court.—*Menefee v. Riverside Cotton Mills*, 161 N. C. 164, 76 S. E. 741. BUT UPON A WRIT OF ERROR TO THE SUPREME COURT OF THE UNITED STATES THIS CASE WAS REVERSED. Chief Justice White delivered the opinion which was without dissent. He said, "the courts of one state may not, without violating the 'due process of law' clause of the fourteenth amendment to the Constitution of the United States, render a money judgment against a corporation organized under the laws of another state upon service on a resident director where the corporation has not come into the former state for the purpose of doing business therein; has done no business therein; has no property therein; and has no qualified agent therein where service can be

had." *Riverside Cotton Mills v. Menefee*, 237 U. S. 189, 59 Law. Ed. 910, 35 S. Ct. 579.

22. Service by publication. Where the person on whom the service of the summons is to be made cannot, after due diligence, be found in the state, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof and it in like manner appears that a cause of action exists against the defendant in respect to whom service is to be made, or that he is a proper party to an action relating to real property in this state, such court or judge may grant an order that the service be made by publication of a notice in either of the following cases:

1. Where the defendant is a foreign corporation, and has property, or the cause of action arose, in the state.

2. Where the defendant, a resident of this state, has departed therefrom or keeps himself concealed therein with intent to defraud his creditors or to avoid the service of a summons.

3. Where he is not a resident, but has property in this state, and the court has jurisdiction of the subject of the action.

4. Where the subject of the action is real or personal property in this state, and the defendant has, or claims, or the relief demanded consists wholly or partly in excluding him from any actual or contingent lien or interest therein.

5. Where the action is for divorce.

6. Where the stockholders of a corporation are deemed to be necessary parties to an action and their names or residences are unknown; or where the names or residences of parties interested in real estate the subject of an action are unknown, if the name of at least one of the parties to the action and interested in the subject matter thereof is known, and he is a resident of the state, the court having jurisdiction may, upon affidavit that after due diligence the names or residences of such parties can not be ascertained, authorize service by publication.

7. Where in actions for the foreclosure of mortgages on real estate, if any party having any interest in, or lien upon, such mortgaged premises, is unknown to the plaintiff, and his residence can not, with reasonable diligence, be ascertained, and such fact is made to appear by affidavit.

8. Where no officer or agent of a domestic corporation upon whom service can be made can, after due diligence, be found in the state, and such facts are made to appear by affidavit. This sub-

section also applies to all summonses, orders to show cause, orders and notices issued by any board of aldermen, board of town or county commissioners, or by individuals.

C. S., s. 484; Rev., s. 442; Code, ss. 218, 221; 1885, c. 380; 1889, cc. 108, 263; 1895, c. 334.

Process § 96. An affidavit which shows that defendant cannot, after due search, be found in the state, that he is a nonresident and has property in the state, that the court has jurisdiction of the action, etc., states facts sufficient for service of process by publication.—Page v. McDonald, 159 N. C. 38, 74 S. E. 642.

Process § 96. The provision that where it is made to appear by affidavit to the satisfaction of the court that after due diligence, a defendant cannot be found within the state, an order shall be made for the publication of the process, requires the fact of the inability to find a defendant to be established by affidavit.—Peters Grocery Co. v. Collins Bag Co., 142 N. C. 174, 55 S. E. 90.

Process § 96. An affidavit alleging or showing due diligence and that defendant cannot be found within the state is an essential condition precedent to a valid service by publication, and an affidavit in an attachment suit which merely alleges that defendants are residents of another state and cannot be found within the state, but fail to show any diligence or search whatever, is fatally defective, and a publication based thereon does not give the court jurisdiction.—Flint v. Coffin, 176 Federal 872, 100 C. C. A. 342.

Attachment § 255. Unpaid balances on stock subscriptions due a foreign corporation are property which may be attached in the hands of the subscribers and subjected to the payment of corporate debts.—Cooper v. Adel Security Co., 122 N. C. 463, 30 S. E. 348.

Attachment § 232. Where, in attachment, it appears from the whole record that the statute has been substantially complied with, the action will not be dismissed, nor the attachment dissolved.—Best v. British & American Co., 128 N. C. 351, 38 S. E. 923.

23. Manner of publication. The order must direct the publication in one or two newspapers to be designated as most likely to give notice to the person to be served, and for such length of time as is deemed reasonable, not less than once a week for four successive weeks, of a notice, giving the title and purpose of the action, and requiring the defendant to appear and answer, or demur to the complaint at a time and place therein mentioned; and no publication of the summons, or mailing of the summons and complaint, is necessary. The cost of publishing in a newspaper shall not exceed one dollar and fifty cents an inch of solid type, and shall in no case exceed six dollars for the notice.

C. S., s. 485; Rev., s. 443; Code, s. 219; 1903, c. 134; C. C. P., c. 84; 1876-7, c. 241, s. 3.

24. Filing complaint, in cases of publication. In all cases wherein publication is made, the complaint must be filed before the expiration of the time of publication ordered.

C. S., s. 486; Rev., s. 442; Code, s. 218.

25. When service by publication complete. In the cases in which service by publication is allowed, the summons is deemed served at the expiration of the time prescribed by the order of publication, and the party is then in court.

C. S., s. 487; Rev., s. 444; Code, s. 227; C. C. P., s. 88

26. Jurisdiction acquired from service. From the time of service of the summons, in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction, and to have control of all subsequent proceedings.

C. S., s. 488; Rev., s. 445; Code, s. 229; C. C. P., s. 90.

27. Proof of service. Proof of the service of the summons or notice must be—

1. By the certificate of the sheriff or other proper officer.

2. In case of publication, the affidavit of the printer, or of his foreman or principal clerk, showing the same.

3. The written admission of the defendant.

C. S., s. 489; Rev., s. 446; Code, s. 228; C. C. P., s. 89.

28. Voluntary appearance by defendant. A voluntary appearance of a defendant is equivalent to personal service of the summons upon him.

C. S., s. 490; Rev., s. 447; Code, s. 229; C. C. P., s. 90.

29. Service on foreign corporation. Whenever any action of which a justice of the peace has jurisdiction shall be brought against a foreign corporation, which corporation is required to maintain a process agent in the state, the summons may be issued to the sheriff of the county in which such process agent resides, and when certified under the seal of his office by the clerk of the superior court of the county in which the justice issuing such summons resides to be under the hand of such justice, the sheriff of the county to which such summons shall be issued shall serve the same as in other cases and make due return thereof. No justice of the peace shall enter a judgment in such cases against any such foreign corporation unless it shall appear that the process was duly served upon such process agent at least twenty days before the return day of the same. The summons may be made returnable at a time to be therein named, not exceeding forty days from the date of such summons: Provided, this section shall not apply to actions commenced in a county where the defendant has an officer or agent upon whom

process may be served: Provided, that any corporation having no process agent in this state, but having an agent who collects money for it, said agent shall be deemed a process agent within the terms of this section, and that this proviso shall apply to existing claims as well as those arising hereafter. Such service can be made in respect to a foreign corporation only when it has property, or the cause of action arose, or the plaintiff resides in this state, or when it can not be made personally within the state upon the president, treasurer, or secretary thereof.

C. S., s. 1494; Rev., s. 1448; 1907, c. 473; Ex. Session 1920, c. 28.

Justice of Peace § 80. Notwithstanding the provision that no process shall be issued by a justice to any county other than his own, unless a bona fide defendant reside out of his county, he may, though no defendant reside in the county, acquire jurisdiction of a foreign corporation by service on it outside his county, pursuant to section above, providing that when an action, of which a justice has jurisdiction, is brought against a foreign corporation, required to maintain a process agent in the state, the summons, certified in a prescribed manner, to be under the hand of such justice, may be issued to the sheriff of the county in which such process agent resides, and such sheriff shall serve it.—*Allen-Fleming Co. v. Southern Ry. Co.*, 145 N. C. 37, 58 S. E. 793.

Justice of Peace § 84. Defendant does not make a special appearance in a justice's court by merely making such appearance before commissioner in taking deposition.—*Ibid.*

30. Verification by corporation or the state. When a corporation is a party the verification may be made by any officer, or managing or local agent thereof upon whom summons might be served; and when the state or any officer thereof in its behalf is a party, the verification may be made by any person acquainted with the facts.

C. S., s. 531; Rev., s. 491; Code, s. 258; 1901, c. 610; C. C. P., s. 117; 1868-9, c. 159, s. 7.

Corporations § 517. When a corporation is a party the verification of any pleading may be made by a managing or local agent thereof, as well as an officer.—*Godwin v. Carolina Tel. & Tel. Co.*, 136 N. C. 258, 48 S. E. 636.

Corporations § 517. The manager of a foreign corporation is an officer, within above section, providing that, when a corporation is a party, verification of a pleading may be by an officer thereof.—*Best v. British & American Mortgage Co.*, 131 N. C. 70, 42 S. E. 456.

31. Attachment. In what actions attachment granted. A warrant of attachment against the property of one or more defendants in an action may be granted upon the application of the plaintiff, as specified in this article, when the action is to recover a sum of money, or damages for one or more of the following causes:

1. Breach of contract, express or implied.
2. Wrongful conversion of personal property.
3. Any other injury to real or personal property, in consequence of fraud, or other wrongful act.
4. Any injury to the person, caused by negligence or wrongful act.

C. S., s. 798; Rev., s. 758; Code, s. 347; 1893, c. 77; 1901, c. 740; C. C. P., s. 197.

Nature and Grounds.

Attachment § 7. The plaintiff in a libel action has a right to attach defendant's property in actions for any "injury to the person, caused by negligence or wrongful act"; an injury to a person's reputation being an "injury to the person" within statute.—*Tisdale v. Eubanks*, 180 N. C. 153, 104 S. E. 339.

Attachment § 8. An attachment lies for unliquidated damages arising out of breach of contract.—*Walton v. Walton*, 178 N. C. 73, 100 S. E. 176; *Foushee v. Owens*, 122 N. C. 360, 29 S. E. 770; *Judd v. Crawford Gold Mining Co.*, 120 N. C. 397, 27 S. E. 81.

Form and Requisites.

Attachment § 145. The duties imposed on an officer issuing the writ of attachment cannot be delegated, and hence an attachment should not be issued in blank.—*Carson v. Woodrow*, 160 N. C. 144, 75 S. E. 996.

Direction to Officers.

Attachment § 145. Writs of attachment issued by the superior court shall be addressed to a sheriff, and not to a constable.—*Ibid.*

Attachment § 146. Such statutes as Revisal 1905, sections 937, 2939, authorizing constables to serve ordinary court process, do not authorize them to serve writs of attachment issued by the superior court, which under section 765, must be directed to a sheriff.—*Ibid.*

Property Subject to Attachment.

Attachment § 62. A note is property within Revisal 1905, section 777, providing for service of process upon nonresident by attachment of his property within the state and publication of notice.—*Armstrong v. Kinsell*, 164 N. C. 125, 80 S. E. 235.

Attachment § 64. Proceeds of property sold in claim and delivery proceedings on being paid to attorney for plaintiff is subject to attachment as plaintiff's property, and is not exempt as being in custodia legis.—*First National Bank v. Johnston*, 161 N. C. 506, 77 S. E. 404.

Attachment § 58. An attachment can be levied only upon property subject to execution, and hence an attachment upon the equitable interest of a nonresident defendant in lands held in trust is void, and will not support any judgment.—*Johnson v. Whilden*, 166 N. C. 104, 81 S. E. 1057.

Defects or Irregularities in Proceedings.

Attachment § 232. Where a writ of attachment was issued in blank, it was properly dissolved on motion.—*Carson v. Woodrow*, 160 N. C. 144, 75 S. E. 996.

Attachment § 232. Where in a proceeding by attachment, the whole record shows that the statute has been substantially complied with, the action will not be dismissed nor the attachment dissolved.—Page v. McDonald, 159 N. C. 38, 74 S. E. 642.

Attachment § 206. In proper instances, where civil actions are commenced, and service is obtained by attachment on defendant's property, and publication of a notice based on the jurisdiction thus acquired, the issuance of a summons is unnecessary.—Jenette v. Hovey & Co., 182 N. C. 30, 108 S. E. 301.

32. Affidavit must show what. To entitle the plaintiff to a warrant of attachment he must show by affidavit to the satisfaction of the court as follows:

1. That one of the causes of action specified in the preceding section exists against the defendant. If the action is to recover damages for breach of contract, the affidavit must show that the plaintiff is entitled to recover a sum stated therein, over and above all counterclaims known to him.

2. That the defendant is either a foreign corporation or a non-resident of the state, or a domestic corporation none of whose officers can be found in the state after due diligence; or, if he is a natural person and a resident of the state, that he has departed therefrom, or keeps himself concealed therein, with intent to defraud his creditors or to avoid service of summons; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the state, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property with like intent.

C. S., s. 799; Rev., s. 759; Code, s. 349; 1897, c. 476; C. C. P., s. 201.

Attachment § 92. An affidavit which shows that defendant is a nonresident, and has property in the state, that plaintiff has cause of action against him arising out of contract by which he expressly promised to pay a specified sum for professional services rendered at his request, etc., sufficiently complies with above section, defining the requisites of an affidavit for a warrant of attachment.—Page v. McDonald, 159 N. C. 38, 74 S. E. 642.

Attachment § 92. An affidavit for attachment is defective which does not definitely and distinctly state any fact entitling plaintiff to an attachment.—Finch v. Slater, 152 N. C. 155, 67 S. E. 264.

Source of Information.

Attachment § 100. Affidavit in attachment, alleging that defendant is about to assign, dispose of, and secrete a sum of money with intent to defraud creditors, but not setting forth the grounds upon which the belief is based, held fatally defective.—First National Bank v. Tarboro Cotton Factory, 179 N. C. 203, 102 S. E. 195.

Attachment § 100. An affidavit for an attachment is fatally defective where it alleged that defendant was about to remove his property from

the state with intent to defraud creditors, but not alleging the grounds upon which belief was based, and that he was then in another state.—*Finch v. Slater*, 152 N. C. 155, 67 S. E. 264.

Averment as to Grounds for Attachment.

Attachment § 110. In an affidavit of attachment, an allegation that defendants "are about to dispose of their property with intent to defraud plaintiffs" is but the allegation of a belief, and hence the grounds on which it is founded must be set out.—*Judd v. Crawford Gold Mining Co.*, 120 N. C. 397, 27 S. E. 81.

Averment as to Property of Defendant.

Attachment § 116. An affidavit to procure an attachment need not state that defendant had property in the state.—*Foushee v. Owen*, 122 N. C. 360, 29 S. E. 770.

Attachment § 116. An affidavit for attachment against a nonresident not personally served, which does not state that he has property within the state, confers no jurisdiction against him.—*Balk v. Harris*, 122 N. C. 64, 30 S. E. 318.

Attachment § 116. An affidavit on which a warrant of attachment against a nonresident was issued was not defective because it did not allege that defendant "had property in this state."—*Parks v. Adams*, 113 N. C. 473, 18 S. E. 665.

Defects or Irregularities.

Attachment § 232. Where service of summons is not made upon defendant in attachment either personally or by publication, as required by statute, defendant is entitled to have attachment vacated.—*Finch v. Slater*, 152 N. C. 155, 67 S. E. 264.

Attachment § 232. Where, in attachment, it appears from the whole record that the statute has been substantially complied with, the action will not be dismissed, nor the attachment dissolved.—*Best v. British & American Mortgage Co.*, 128 N. C. 351, 38 S. E. 923.

Claims by Third Persons.

Attachment § 306. Claimant of property attached is required to set forth in affidavit or petition facts of ownership.—*Patrick-Mosteller Co. v. James R. Baker & Co.*, 180 N. C. 588, 105 S. E. 271.

33. All property liable to attachment. The rights or shares of the defendant in the stock of any association or corporation, with the interest and profits thereon, and all other property in this state of the defendant, are liable to be attached, levied on, and sold to satisfy the judgment and execution.

C. S., s. 816; Rev., s. 776; Code, s. 362; C. C. P., s. 206.

Attachment § 62. A note is property within above section, providing for service of process upon a nonresident by attachment of his property within the state and publication of notice.—*Armstrong v. Kinsell*, 164 N. C. 125, 80 S. E. 235.

Attachment § 64. Proceeds of property sold in claim and delivery proceedings on being paid to the attorney for plaintiff is subject to attachment as plaintiff's property, and is not exempt as being in custodia legis.—*First National Bank v. Johnston*, 161 N. C. 506, 77 S. E. 404.

Attachment § 64. Money proceeds of the sale of land which belonged to wards are subject to attachment in the hands of the clerk after the confirmation of the sale.—*Le Roy v. Jacobsky*, 136 N. C. 443, 48 S. E. 796.

Attachment § 61. Tax books in the hands of a sheriff for collection are not subject to attachment by a personal creditor of that officer, though the amounts to be collected are debts due the sheriff personally, he having previously settled his taxes with the proper authorities.—*Davie v. Blackburn*, 117 N. C. 383, 23 S. E. 321.

Attachment § 64. Property in the hands of the sheriff, under a mandate in claim and delivery, which requires him to take the property and deliver it to plaintiff, is not subject to attachment.—*Williamson v. Nealy*, 119 N. C. 339, 25 S. E. 953.

34. Levy on intangible property. The execution of the attachment upon any such rights, shares, or any debts or other property incapable of manual delivery to the sheriff, shall be made by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation, or with the debtor or individual holding such property, with a notice showing the property levied on. This certified copy must be furnished to the sheriff by the plaintiff, and the certification must be by the clerk of the court from which the warrant was issued, or by the justice of the peace who issued it. A person receiving or collecting moneys within this state on behalf of any corporation of this or any other state or government is deemed a local agent for the purpose of this section. Such service can be made in respect to a foreign corporation only when it has property within this state, or the cause of action arose or the plaintiff resides in the state, or when the service can be made within the state personally upon the president, treasurer or secretary thereof. Whenever a writ of attachment may be sued out against a nonresident debtor owning shares of stock in a resident corporation, and no officer of said resident corporation may be found in the county of its principal office upon whom service of said attachment may be made, said writ may be served by leaving a certified copy of the warrant of attachment with the person in charge of the property of said corporation in said county, together with a notice showing the stock levied upon.

C. S., s. 817; Rev., s. 777; Code, s. 363; C. C. P., s. 207; 1905, c. 294; 1921, c. 94.

Attachment § 62. A note is property within above section, providing for service of process upon a nonresident by attachment of his property within the state and publication of notice.—*Armstrong v. Kinsell*, 164 N. C. 125, 80 S. E. 235.

Corporations § 255. Unpaid balances on stock subscriptions due a foreign corporation are property which may be attached in the hands of the subscribers, and are subject to the payment of corporate debts, within Code, section 218, subsection 1, providing for service by publication where de-

defendant is a nonresident, but has property in the state, and section 363, providing that an indebtedness in the hands of the debtor may be attached.—*Cooper v. Adel Security Co.*, 122 N. C. 463, 30 S. E. 348.

35. Action by attorney-general. An action may be brought by the attorney-general in the name of the state, upon his own information or upon the complaint of a private party, against the parties offending, in the following cases:

1. When a person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this state, or any office in a corporation created by the authority of this state; or,

2. When a public officer, civil or military, has done or suffered an act which, by law, makes a forfeiture of his office.

3. When any person, natural or corporate, has or claims to have or hold any rights or franchises by reason of a grant or otherwise, in violation of the provisions of the section of article one of the chapter entitled State Lands which declares entries and grants not authorized by that chapter to be void and not to constitute color of title.

C. S., s. 870; Rev., s. 827; Code, s. 607; C. C. P., s. 366; 1911, cc. 195, 201.

Corporations § 613. The Attorney General can not bring an action on his own motion for the vacation of a corporation's articles, etc., for fraud.—*Attorney General v. Holly Shelter R. Company*, 134 N. C. 481, 46 S. E. 959.

36. Action by private person with leave. When application is made to the attorney-general by a private relator to bring such an action, he shall grant leave that it may be brought in the name of the state, upon the relation of such applicant, upon the applicant tendering to the attorney-general satisfactory security to indemnify the state against all costs and expenses which may accrue in consequence of the action.

C. S., s. 871; Rev., s. 828; Code, s. 608; 1874-5, c. 76; 1881, c. 330.

Corporations § 387. If a New York mining corporation, doing business in North Carolina, had violated its articles of incorporation, the matter could not be set up by defendant in company's action in North Carolina, to recover land, but it would be necessary that quo warranto be instituted by leave of the Attorney-General.—*Troy & North Carolina Gold Mining Co. v. Snow Lumber Co.*, 173 N. C. 593, 92 S. E. 494.

37. Actions by attorney-general to prevent ultra vires acts, etc. In the following cases the attorney-general may, in the name of the state, upon his own information, or upon the complaint of a private party, bring an action against the offending parties for the purpose of—

1. Restraining by injunction a corporation from assuming or exercising any franchise or transacting any business not allowed by its charter.

2. Restraining any person from exercising corporate franchises not granted.

3. Bringing directors, managers, and officers of a corporation, or the trustees of funds given for a public or charitable purpose, to an account for the management and disposition of the property confided to their care.

4. Removing such officers or trustees upon proof of gross misconduct.

5. Securing, for the benefit of all interested, the said property or funds.

6. Setting aside and restraining improper alienations of the said property or funds.

7. Generally compelling the faithful performance of duty and preventing all fraudulent practices, embezzlements, and waste.

C. S., s. 1143; Rev., s. 1197; Code, ss. 607, 686; 1901, c. 2, s. 107.

This act is applicable only when the purpose is not to dissolve the corporation by a judicial decision, but to preserve it, in order that its useful functions may be performed, and, at the same time, that it may not be able to abuse its powers or transcend them.—Attorney-General v. Petersburg & Roanoke R. R. Co., 28 N. C. 463.

38. Express powers. Every corporation has power—

1. To make, use, and alter a common seal.

2. To purchase, acquire by devise or bequest, hold and convey real and personal property in or out of the state, and to mortgage the same and its franchises.

C. S., s. 1126; Rev., s. 1128; Code, ss. 663, 666, 691; 1893, c. 159; 1901, c. 2, s. 1; 1909, c. 507, s. 1.

Acquisition and disposal of property.

Corporations § 439. A private corporation may dispose of its property without express authority from the legislature.—Benbow v. Cook, 115 N. C. 324, 20 S. E. 453.

Corporations § 656. A foreign corporation created for the purpose of mining and milling gold and other minerals in this state may, if not prevented by its charter, acquire and dispose of real property in furtherance of the objects of its creation.—Barcello v. Hapgood, 118 N. C. 712, 24 S. E. 124.

Corporations § 438. In this state where the statutes of mortmain have never been adopted, the common-law right to take an estate in fee, inci-

dent to a corporation, is unlimited except by its charter and by statute.—*Cross v. Seaboard Air Line Ry. Co.*, 172 N. C. 119, 90 S. E. 14.

Corporations may hold land in fee.

Corporations § 438. Land conveyed to corporation in fee does not revert to grantor or his heirs on the extinction of the corporation.—*Wilson v. Leary*, 120 N. C. 90, 26 S. E. 630; *Asheville Division, Sons of Temperance v. Aston*, 92 N. C. 578.

Corporations may acquire property by adverse possession.

Adverse Possession § 10. A railroad company could acquire title to land outside of its right of way by adverse possession for 20 years, tolling entry originally because of presumption of a grant of deed arising therefrom.—*Cross v. Seaboard Air Line Ry. Co.*, 172 N. C. 119, 90 S. E. 14.

Corporations § 387. Where land was conveyed to railroad corporation, and its acts of acquiring and holding it was ultra vires, a private person could not be heard to attack its title on that ground, and no one but the state could complain.—*Ibid.*

Corporations may mortgage property and franchise.

Corporations § 415. The directors of a corporation, unless specially restrained by the charter or by-laws, may borrow money with which to conduct its business, and secure payment by mortgage on corporate property.—*Wall v. Rothrock*, 171 N. C. 388, 88 S. E. 633.

Corporations § 309. A director of a going solvent corporation may aid it with loans of money and take security therefor.—*Powell Bros. v. McMullan Lumber Co.*, 153 N. C. 52, 68 S. E. 926.

Corporations § 480. One who takes a mortgage upon corporation property for money loaned does so with the knowledge that his lien may be displaced in favor of laborer's liens or judgments for tort and the expenses of receivership or of other court proceedings to wind up the corporation in cases of insolvency.—*Humphrey Bros. v. Buell-Crocker Lumber Co.*, 174 N. C. 514, 93 S. E. 971.

39. Probates before officer of interested corporation. In all cases when acknowledgment of proof of any conveyance has been taken before a clerk of superior court, justice of the peace or notary public, who was at the time a stockholder or officer in any corporation, bank or other institution which was a party to such instrument, the certificates of such clerk, justice of the peace, or notary public shall be held valid, and are so declared.

C. S., s. 3345; Rev., s. 1015; 1907, c. 1003, s. 1.

40. By president and attested by treasurer under corporate seal. All deeds and conveyances for lands in this state, made by any corporation of this state, which have heretofore been proved or acknowledged before any notary public in any other state, or before any commissioner of deeds and affidavits for the state of North Carolina in any other state, and sealed with the common seal of the corporation and attested by the treasurer, are hereby

ratified and declared to be good and valid deeds for all purposes. Where such deeds have been executed for the corporation by its president and attested, sealed and acknowledged or probated as aforesaid, and the acknowledgment or probate has been duly adjudged sufficient by any deputy clerk and ordered registered, the acknowledgment, probate and registration are ratified, and said deed is declared valid. Such deeds, or certified copies thereof, may be used as evidence of title to the lands therein conveyed in the trial of any suits in any of the courts of this state where the title of said lands shall come in controversy.

C. S., s. 3352; Rev., s. 1028; 1905, c. 307.

41. Probates before stockholders and directors of building and loan associations. No acknowledgment or proof of execution, including privy examination of married women, of any mortgage or deed of trust executed to secure the payment of any indebtedness to any building and loan association, prior to the first day of January, one thousand nine hundred and thirteen, shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof or privy examination was a stockholder or director in said building and loan association; but such proofs and acknowledgment and the registration thereof, if in all other respects valid, are declared to be valid. Nor shall the registration of any such instrument ordered to be registered be held invalid by reason of the fact that the clerk or deputy clerk ordering the registration was a stockholder or director in any building and loan association whose indebtedness is secured thereby.

C. S., s. 3346; Ex. Sess. 1913, c. 41.

42. Release of corporate mortgages by corporate officers. All mortgages and deeds in trust executed to a corporation may be satisfied and so marked of record, as by law provided for the satisfaction of mortgages and deeds in trust, by the president, cashier, secretary or treasurer of such corporation signing the name of such corporation by him as such officer. Where mortgages or deeds in trust were marked "satisfied" on the records before the twenty-third day of February, nineteen hundred and nine, by any president, secretary, treasurer or cashier of any corporation by such officer writing his own name and affixing thereto the title of his office in such corporation, such satisfaction is validated, and is as effective to all intents and purposes as if a deed of release duly executed by such corporation had been made, acknowledged and recorded: Provided, however, this validating

provision shall not apply to any suits pending in the courts of the state on February 23, 1909.

C. S., s. 2597; 1909, c. 283, ss. 2, 3.

43. By president and attested by witness before January, 1900. All deeds and conveyances for land in this state, made prior to January first, one thousand nine hundred, by the president of any corporation duly chartered under the laws of this state, and attested by a witness, is hereby declared to be a good and valid deed by such corporation for all purposes, and shall be admitted to probate and registration and shall pass title to the property therein conveyed to the grantee as fully as if said deed were executed according to provisions and forms of law in force in this state at the date of the execution of said deed. This section does not apply to suits pending March 8, 1909.

C. S., s. 3353; 1909, c. 859, s. 1.

44. Proof of corporate articles before officer authorized to probate. All proofs of articles of agreement for the creation of corporations which were, prior to the eighteenth day of February, one thousand nine hundred and one, made before any officer who was at that time authorized by the law to take proofs and acknowledgments of deeds and mortgages are ratified.

C. S., s. 3356; Rev., s. 1027; 1901, c. 170.

45. Corporate name not affixed, but signed otherwise prior to January, 1919. In all cases prior to the first day of January, one thousand nine hundred and nineteen, where any deed conveying lands purported to be executed by a corporation, but the corporate name was in fact not affixed to said deed, but same was signed by the president and secretary of said corporation, or by the president and two members of the governing body of said corporation, and said deed has been registered in the county where the land conveyed by said deed is located, said defective execution above described shall be and the same is hereby declared to be in all respects valid, and such deed shall be deemed to be in all respects the deed of said corporation.

C. S., s. 3354; 1919, c. 53, s. 1.

46. Legal rate is six per cent. The legal rate of interest shall be six per cent per annum for such time as interest may accrue, and no more.

C. S., s. 2305; Rev., s. 1950; Code, s. 3385; 1895, c. 69; 1876-7, c. 91.

Interest § 1. "Interest" is the premium allowed by law for the use of money.—*MacRachan v. Bank of Columbus*, 164 N. C. 24, 80 S. E. 184.

What law governs.

Interest § 28. Where money is loaned in Virginia on real estate security situate in North Carolina, the security being the basis of the loan, the rate of interest is governed by the law of North Carolina, and not by that of Virginia.—*Faison v. Grandy*, 128 N. C. 438, 38 S. E. 897.

Time from which interest runs.

Interest § 39. In figuring interest on a judgment, interest will be allowed from the first day of the term at which the judgment is rendered.—*In re Chisholm's Will*, 176 N. C. 211, 96 S. E. 1031.

Judgments.

Interest § 22. Though consent judgment is a contract between parties, successful party is entitled to interest.—*In re Chisholm's Will*, 176 N. C. 211, 96 S. E. 1031.

Interest § 22. No demand is necessary to set the interest running upon a judgment.—*Ibid.*

Computation.

Interest § 59. Where payments upon a note do not exceed the interest due at the time they are made, no new principal can be created at the time. It is only when a payment or payments amount to more than the interest that a balance may be struck, and a new principal created.—*Reade v. Street*, 122 N. C. 301, 30 S. E. 124.

47. Penalty for usury; corporate bonds may be sold below par.

The taking, receiving, reserving or charging a greater rate of interest than six per centum per annum, either before or after the interest may accrue, when knowingly done, shall be a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. And in case a greater rate of interest has been paid, the person or his legal representatives or corporation by whom it has been paid may recover back twice the amount of interest paid, in an action in the nature of action for debt. In any action brought in any court of competent jurisdiction to recover upon any such note or other evidence of debt, it is lawful for the party against whom the action is brought to plead as a counterclaim the penalty above provided for, to wit, twice the amount of interest paid as aforesaid, and also the forfeiture of the entire interest. Nothing contained in the foregoing section, however, shall be held or construed to prohibit private corporations from paying a commission on or for the sale of their coupon bonds, nor from selling such bonds for less than the par value thereof. This section shall not apply to contracts executed prior to February twenty-first, one thousand eight hundred and ninety-five.

C. S., s. 2306; Rev., s. 1951; Code, s. 3836; 1895, c. 69; 1903, c. 154; 1876-7, c. 91.

NO CASES SEEM TO HAVE ARISEN UNDER THE PART OF THE SECTION ALLOWING CORPORATIONS TO SELL BONDS BELOW PAR AND PAY A COMMISSION ON THE SALES.

Limitations of Actions § 49. The rule that a statute of limitations does not begin to run on open, mutual running accounts, except from the last item in the account, applies to an action to recover a penalty for usury.—*English Lumber Company v. Wachovia Bank & Trust Co.*, 179 N. C. 211, 102 S. E. 205.

Usury § 18. A commission charged for the purpose of securing more than 6 per cent interest in addition to a charge of six per cent. interest constitutes usury.—*Ibid.*

Usury § 1. "Usury" is a profit greater than the lawful rate of interest, intentionally exacted as a bonus for the forbearance of an existing indebtedness or a loan of money, imposed upon the necessities of borrower in a transaction where money is to be returned at all events.—*Monk v. Goldstein*, 172 N. C. 516, 90 S. E. 519.

Usury § 55. A commission, in addition to the legal rate charged for obtaining a loan from a third party, does not make the transaction usurious.—*Savings Loan & Trust Co. v. Yokley*, 174 N. C. 573, 94 S. E. 102.

Usury § 140. Where plaintiff was compelled to pay more than 6 per cent. for a loan from defendant bank, he was not in *pari delicto* with the bank and could recover the penalty, though he was a director of the bank and a member of its loan committee.—*MacRaackan v. Bank of Columbus*, 164 N. C. 24, 80 S. E. 184.

Usury § 11. There are, generally speaking, four elements of usury: A loan or forbearance of money, either express or implied; an understanding that the principal shall be or may be returned; that for such loan or forbearance a greater profit than is authorized by law shall be paid or agreed to be paid; and that the contract be entered into with an intention to violate the law.—*Planters' National Bank v. Wysong & Miles*, 177 N. C. 380, 99 S. E. 199; *Ector v. Osborne*, 179 N. C. 667, 103 S. E. 388.

Usury § 134. Where an usurious rate of interest on money has been paid by the borrower of money, the statutory penalty is double the amount of the usury, but where it is only charged, and not collected, the statute eliminates the usury and forfeits the interest on the amount of the loan.—*Ragan v. Stephens*, 178 N. C. 101, 100 S. E. 196.

NOTE. Section 2482 of the Consolidated Statutes allows 10%, in lieu of interest, to be added to the price of supplies furnished for agricultural purposes. And section 2485 allows a commission of 10%, in lieu of interest, on money advanced for agricultural purposes.

48. Express Powers. Every corporation has power:

1. To elect and appoint, in such manner as it determines to be proper, all necessary officers and agents, fix their compensation and define their duties and obligations. And when there devolves upon an officer or agent of a corporation such duties and responsibilities that a financial loss would result to the corporation from the death and consequent loss of the services of such officer or agent, the corporation has an insurable interest in, and the power to insure the life of, the officer or agent for its benefit.

2. To conduct business in this state; other states, the District

of Columbia, the territories, dependencies and colonies of the United States, and in foreign countries, and have offices in or out of the state.

3. To make by-laws and regulations, consistent with its charter and the laws of the state, for its own government, and for the due and orderly conduct of its affairs and management of its property.

4. To wind up and dissolve itself, or be wound up and dissolved, in the manner hereafter mentioned.

C. S., s. 1126; Rev., s. 1128; Code, ss. 663, 666, 691, 692, 693; 1893, c. 159; 1901, c. 2; s. 1; 1909, c. 507, s. 1.

Note. Statute of Limitations apply to individuals and corporations alike.

For a long time it was held that a nonresident corporation could not successfully plead the Statute of Limitations, notwithstanding the fact that it might have had an agent resident at all times within the state, might own property in the state and constantly engage in business in the state. *Williams v. B. & L. Assn.*, 131 N. C. 267, 42 S. E. 607; *Green v. Ins. Co.*, 139 N. C. 309, 51 S. E. 887; *Alpha Mills v. Eng. Co.*, 116 N. C. 797, 21 S. E. 917. But in 1910 our Supreme Court overruled this line of decisions and held that foreign corporations which had complied with section 1243 of the Revisal in maintaining an agent in this state upon whom process could be served and public service corporations doing business in this state might plead the statute of limitations. The test of availability to plead is whether the corporations are amenable to the process of our state courts. *Volivar v. Cedar Works*, 152 N. C. 656, 68 S. E. 200, reversing the same case in 152 N. C. 34, 67 S. E. 42. In the last *Volivar* case the court seems to hold that the statutes of limitation being in the nature of a privilege or amnesty and a defense to prosecutions could not be permitted to domestic corporations and denied to foreign corporations when the latter had at all times an agent in this state upon whom process could be served. And it cites *R. R. v. Green*, 216 U. S. 400. This case holds "a foreign railway corporation which has come into the state in compliance with its laws and has therein acquired property of a fixed and permanent nature, upon which it has paid all taxes levied by the state, is a person within the jurisdiction of the state and as such is protected by the 'equal protection of law clause' of the fourteenth amendment to the Constitution of the United States." Justice Day, delivering the opinion of the Supreme Court, quoted from the former decision "the inhibition of the amendment that no state shall deprive any person within its jurisdiction of the equal protection of its law was designed to prevent any person or class of persons as being singled out as special subjects for discriminating or hostile legislation." "In the designation of persons there is no doubt that private corporations are included." "We therefore reach the conclusion that the corporation plaintiff, under the conditions which we have detailed, is, within the meaning of the fourteenth amendment, a person within the jurisdiction of the state of Alabama, and entitled to be protected against any statute of the state which deprives it of the equal protection of the laws."

Note. Creditor may follow assets.

"There is no statute of limitation which protects either stockholders or directors who receive the capital and assets of the corporation with notice by the pending suit of a claim of the plaintiff. In the case of *Long v. Miller*, 93 N. C. 233, it was held that even though a contract sued upon

was barred by the statute, yet the creditor could follow the funds placed in the hands of the trustee to secure such indebtedness. To the same purport are *Faison v. Stewart*, 112 N. C. 332, 17 S. E. 157, *Baker v. Brown*, 151 N. C. 12, 65 S. E. 520; and many other cases. Both the directors and stockholders of the company received and held the capital distributed among them in trust and for benefit of the creditors.

"The cause of action in this case for the recovery of assets of the corporation from the stockholders and the directors did not accrue until judgment was obtained against the corporation upon the indebtedness and the return upon the execution issued thereon *nulla bona*. Until that time they could not have taken proceedings to compel the return of the assets distributed among the stockholders, and the application thereof to the plaintiff's judgment. *Hughes v. Whitaker*, 84 N. C. 640, in which it was said that the plaintiff's remedy 'is open, and is not obstructed by the lapse of time, since until he recovers judgment his claim as a creditor is not established.' In that case the judgment creditor was seeking to pursue the funds of the estate which had been fraudulently alienated. 'No cause of action accrues against the shareholder until the creditor has failed to make the amount of his judgment or ascertained claim from the assets of the company, or unless, perhaps, in certain cases it appears to be useless to proceed against the corporation.' *Hawkins v. Glenn*, 131 U. S. 319; *Scoville v. Thayer*, 105 U. S. 143.

"In the case of *Taylor v. Bowker*, 110 U. S. 113, it was held that in a proceeding 'to enforce judgment against the property of a corporation whose charter had been surrendered, the cause of action does not accrue until the execution has been returned against the corporation.' " *Chatham v. Realty Co.*, 180 N. C. 500, 105 S. E. 329.

49. By-laws. A corporation may, by its by-laws, when consistent with its charter, determine the manner of calling and conducting all meetings; the number of members that constitute a quorum, but in no case shall more than a majority of shares or amount of interest be required to be represented at any meeting in order to constitute a quorum, and if the quorum is not so determined by the corporation, a majority in interest of the stockholders, represented either in person or by proxy, constitutes a quorum; the number of shares that will entitle the members to one or more votes; the mode of voting by proxy; the mode of selling shares for the nonpayment of assessments; the tenure of office of the several officers, and the manner in which vacancies in any of the offices shall be filled till a regular election; and they may annex suitable penalties to such by-laws, not exceeding in any case the sum of twenty dollars for any one offense. The power to make and alter by-laws is in the stockholders, but a corporation may, in the certificate of incorporation, confer that power upon the directors. By-laws made by the directors under power so conferred may be altered or repealed by the stockholders.

C. S., s. 1127; Rev., ss. 1145, 1146; Code, s. 664; 1901, c. 2, ss. 12, 13.

Corporations § 57. As between a corporation and its stockholders and the stockholders themselves, a by-law or resolution may be considered as a contract.—*Misenheimer v. Alexander*, 162 N. C. 226, 78 S. E. 161.

A corporation may make by-laws to govern the sale of stock for non-payment of subscriptions.—*Elizabeth City Cotton Mills v. Dunstan*, 121 N. C. 12, S. E. 1001.

50. Implied powers. In addition to the powers enumerated in the two preceding sections, and the powers specified in its charter, every corporation, its officers, directors and stockholders, possess all the powers and privileges contained in this chapter so far as they are necessary or convenient to the attainment of the objects set forth in such charter, and shall be governed by the provisions and be subject to the restrictions and liabilities in this chapter contained, so far as they are applicable to and not inconsistent with such charter; and no corporation may possess or exercise any other corporate powers, except such incidental powers as are necessary to the exercise of the powers so given. Nothing in this chapter shall authorize or empower corporations organized under this chapter to lease, operate, maintain, manage or control any railroad except street railways.

C. S., s. 1128; Rev., s. 1129; Code, s. 701; 1897, c. 204; 1901, c. 2, s. 4; 1901, c. 6.

Corporations § 370. A manufacturing corporation engaged in the operation of a cotton mill has no implied power to insure the life of its president, at least beyond the period of his connection with the company.—*Victor v. Louise Cotton Mills*, 148 N. C. 107, 61 S. E. 648.

Corporations § 374. A corporation possesses only those implied powers which are necessary to enable it to carry out the powers expressly granted, and its express powers cannot be enlarged by implication.—*Ibid.*

Corporations § 389. The corporate charter is the only source to which a court can look to ascertain what power is conferred on a corporation.—*Ibid.*

Corporations other than railroad companies have a general power to mortgage their property, unless prohibited by some provision in the charter, the right to mortgage being a natural result of the right to incur an indebtedness.—*Antietam Paper Co. v. Chronicle Publishing Co.*, 115 N. C. 142, 20 S. E. 366.

Corporations § 415. The directors of a corporation, unless specially restrained by the charter or by-laws, may borrow money with which to conduct its business, and secure payment by mortgage on corporate property.—*Wall v. Rothrock*, 171 N. C. 388, 88 S. E. 633.

Ultra vires contracts.

Banks § 101. A bank cannot avail itself of the defense of *ultra vires* upon being sued by a purchaser for value on an acceptance discounted and transferred by the bank; there being nothing against public policy in the transaction, and the defendant not having offered to refund.—*Sherrill v. American Trust Co.*, 176 N. C. 591, 97 S. E. 471.

Corporations § 426. The law will not allow a corporation to repudiate the acts of its president in executing a corporate note, and at the same time retain the property for which the note was given.—*Phillips v. Interstate Land Co.*, 176 N. C. 514, 97 S. E. 417.

Corporations § 387. If an act of a corporation be ultra vires, any one or more stockholders may call it in question, and have relief, unless barred by having consented to or acquiesced in it.—*Victor v. Louise Cotton Mills*, 148 N. C. 107, 61 S. E. 648.

Corporations § 426. After receiving benefits of contract, a corporation is estopped from pleading the making of the contract was ultra vires.—*Board of Trustees v. Piedmont Realty Co.*, 134 N. C. 41, 46 S. E. 723.

Corporations § 390. Whether corporate acts are ultra vires is a conclusion of law to be drawn from facts stated.—*Spencer v. Seaboard Air Line Ry. Co.*, 137 N. C. 107, 49 S. E. 96.

51. Banking powers not conferred by this act. No corporation created under the provisions of this chapter shall have the power to carry on the business of discounting bills, notes or other evidences of debt, of receiving deposits of money, of buying gold or silver bullion or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan, or for circulation as money; but in the transaction of its business it may make and take and indorse, when necessary, all such bonds, notes and bills of exchange as the business may require.

C. S., s. 1129; Rev., s. 1134; Code, s. 684; 1901, c. 2, s. 5.

52. Amendments before payment of stock. The incorporators of a corporation, before the payment of any part of its capital, may file with the secretary of state an amended certificate of incorporation, duly signed and acknowledged by the incorporators named in the original certificate, changing the original certificate of incorporation, in whole or in part, which amended certificate takes the place of the original one, and when recorded in the proper county is deemed to have been filed and recorded on the date of filing and recording the original certificate. The officers are entitled to the same fees for filing and recording the amended certificate of incorporation as if it were original; but there shall be charged no additional organization tax, except when the certificate is amended by increasing the capital stock, in which event such tax shall be paid upon the increase.

C. S., s. 1130; Rev., s. 1174; 1901, c. 2, s. 28.

Corporations § 84. Any fundamental change in the charter of a corporation relieves a non-assenting subscriber from liability on his stock.—*Bank v. City of Charlotte*, 85 N. C. 433.

53. Amendments, generally. A corporation, whether organized under a special act or general laws, and which might now be created under the provisions of this chapter, may, in the manner set out below—

1. Change the nature or relinquish one or more branches of its business, or extend its business to such other branches as might have been inserted in its original certificate of incorporation.

2. Change its name.

3. Extend its corporate existence, but if such corporation possesses powers, franchises, privileges or immunities, which could not be obtained under this chapter, such extension does not continue, renew or extend any of the same, but they are waived and abandoned by the filing of the certificate of extension.

4. Increase or decrease its capital stock.

5. Change the par value of the shares of its capital stock.

6. Create one or more classes of preferred stock.

7. Make any other desired amendment. In all cases the certificate of amendment can contain only such provisions as could be lawfully and properly inserted in an original certificate of incorporation filed at the time of making the amendment.

The board of directors shall pass a resolution declaring that the amendment is advisable, and call a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days notice, given personally or by mail; if two-thirds in interest of each class of the stockholders with voting powers vote in favor of the amendment, a certificate thereof shall be signed by the president and secretary, under the corporate seal, acknowledged as in the case of deeds to real estate, and this certificate, together with the written assent, in person or by proxy, of said stockholders, shall be filed and recorded in the office of the secretary of state. Upon such filing the secretary of state shall issue a certified copy thereof, which shall be recorded in the office of the clerk of the superior court of the county in which the original certificate of incorporation is recorded, and thereupon the certificate of incorporation is amended accordingly. The certificate of the secretary of state, under his official seal, that such certificate of amendment and assent have been filed in his office, is evidence of the amendment in all courts and places. A corporation which cannot now be created under the provisions of this chapter may in like manner increase or decrease its capital stock, or change its name.

C. S., s. 1131; Rev., ss. 1175, 1178; 1893, c. 380; 1899, c. 618; 1901, c. 2, ss. 29, 30, 37; 1903; c. 516.

54. Amendments by charitable, educational, penal or reformatory corporations. A charitable, educational, penal or reformatory corporation not under the patronage or control of the state, whether organized under a special act or general laws, may change its name, extend its corporate existence, change the manner in which its directors, trustees, or managers are elected or appointed, abolish its present method of electing such officers and create a different method of election, and generally reorganize the manner of conducting such corporation, and make any other amendment of its charter desired, in the following manner: The board of directors, trustees, or managers shall pass a resolution declaring that the amendment is advisable, and call a meeting of trustees, managers, and directors to take action thereon. The meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days notice given personally or by mail. If two-thirds of the directors, trustees, or managers of the corporation vote in favor of the amendment, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged as provided in the case of deeds to real estate, and such certificate, together with the written assent in person or proxy of two-thirds of the directors, trustees, or managers, shall be filed and recorded in the office of the secretary of state, and upon filing it he shall issue a certified copy thereof, which shall be recorded in the office of the clerk of the superior court of the county in which the original certificate of incorporation is recorded, or in which the corporation is doing business, and thereupon the certificate of incorporation shall be deemed amended accordingly. Such certificate of amendment may contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making the amendment, and the certificate of the secretary of state, under his official seal, that such certificate and assent have been filed in his office shall be taken and accepted as evidence of such amendment in all courts.

C. S., s. 1132; 1917, c. 62, s. 1.

55. Change of location of principal office. The board of directors of a corporation organized under the laws of this state may, by resolution adopted at a regular or special meeting by a two-thirds vote of its members, change the location of the principal office of the corporation in the state. A copy of the resolution,

signed by the president and secretary of the corporation and sealed with the corporate seal, shall be filed in the office of the secretary of state. No certificate need be filed of the removal of an office from one point to another in the same town, city, or township.

C. S., s. 1133; Rev., s. 1176; 1901, c. 2, s. 31.

Venue § 503. The phrase "the principal place of business" is synonymous with the words "principal office."—*Roberson v. Greenleaf-Johnson Lumber Co.*, 153 N. C. 120, 68 S. E. 1064.

56. Curative act; amendments prior to 1901. All amendments to the plan of incorporation of any corporation organized under the provisions of the general laws of North Carolina prior to the passage of the act entitled "An act to revise the corporation law of North Carolina," being chapter two, public laws of nineteen hundred and one, are declared to be valid in all respects, whether such amendments were made in accordance with the provisions of chapter three hundred and eighty of the public laws of eighteen hundred and ninety-three or in accordance with the provisions of chapter two of the public laws of nineteen hundred and one; but no amendment shall be validated by this section unless it is an amendment of such nature as is authorized to be made under the provisions of chapter two of the public laws of nineteen hundred and one.

C. S., s. 1134; Rev., s. 1248; 1905, c. 316.

57. Amendment or repeal of this chapter; a part of all charters. This chapter may be amended or repealed by the legislature, and every corporation is bound thereby; but such amendment or repeal shall not take away or impair any remedy against the corporation, or its officers, for any liability which has been previously incurred. This chapter and all amendments are a part of the charter of every corporation formed hereunder, so far as the same are applicable and appropriate to the objects of the corporation.

C. S., s. 1135; Rev., s. 1136; 1901, c. 2, s. 7.

58. Name must be displayed. The name of every corporation must be at all times conspicuously displayed at the entrance of its principal office in this state, and in default thereof for sixty days the corporation is liable to a penalty of one hundred dollars, to be recovered with costs, by the state, in an action to be prosecuted by or under the direction of the attorney-general.

C. S., s. 1136; Rev., s. 1242; 1901, c. 2, s. 50.

59. Resident process agent. Every corporation having prop-

erty or doing business in this state, whether incorporated under its laws or not, shall have an officer or agent in the state upon whom process in all actions or proceedings against it can be served. A corporation failing to comply with the provisions of this section is liable to a forfeiture of its charter, or to the revocation of its license to do business in this state. In the latter event, process in an action or proceeding against the corporation may be served upon the secretary of state by leaving a true copy thereof with him, and he shall mail the copy to the president, secretary or other officer of the corporation upon whom, if residing in this state, service could be made. For this service to be performed by the secretary, he shall receive a fee of fifty cents, to be paid by the party at whose instance the service was made.

C. S., s. 1137; Rev., s. 1243; 1901, c. 5.

Corporations § 668. Where a state has established by statute a method of personal service on foreign corporations doing business therein, reasonably calculated to give full notice, a corporation doing business in the state will be taken to have accepted as valid the method provided.—*Oliver v. United States Fidelity & Guaranty Co.*, 174 N. C. 417, 93 S. E. 948.

Corporations § 641. The provision for personal service on corporations doing business in the state by leaving a copy of the summons with the secretary of state, held valid.—*Currie v. Golconda Min. & Mill. Co.*, 157 N. C. 209, 72 S. E. 980.

Limitations of Actions § 88. Where a foreign corporation has complied with the statute by continuously maintaining an agent in the state upon whom valid service may be had, it is protected by the statute of limitations, although there was no formal compliance with statutory requirements for domestication and process agents.—*Oliver v. United States Fidelity & Guaranty Co.*, 174 N. C. 417, 93 S. E. 948.

Limitations of Actions § 88. The appointment of a local agent on whom process can be served by a foreign corporation puts into force the statute of limitation, which is suspended by Revisal 1905, section 366, as to nonresident defendants.—*Volivar v. Richmond Cedar Works*, 152 N. C. 656, 68 S. E. 200.

60. Corporate conveyances; when void as to torts. Any corporation may convey lands, and other property which is transferable by deed, by deed sealed with the common seal and signed in its name by the president, a vice-president, presiding member or trustee, and two other members of the corporation, and attested by a witness, or by deed sealed with the common seal and signed in its name by the president, a vice-president, presiding member or trustee, and attested by the secretary or assistant secretary of the company. But any conveyance of its property, whether absolutely or upon condition, executed by a corporation, is void as to torts committed by such corporation prior to the execution of said deed, if persons injured, or their representatives, commence

proceedings or actions to enforce their claims against said corporation within sixty days after the registration of said deed as required by law.

C. S., s. 1138; Rev., 1130; Code, s. 685; 1891, c. 118; 1893, c. 95, s. 2; 1899; c. 235, s. 17; 1901, c. 2, s. 2; 1903; c. 660, s. 1; 1905, c. 114.

Corporations § 309. While the execution by a corporation of a mortgage deed in the manner prescribed by above section, when the corporate seal is affixed, is presumed to be authorized by the stockholders, this presumption is rebutted when the deed is executed to the corporation's officers.—*Edwards v. Snow Hill Supply Co.*, 150 N. C. 171, 63 S. E. 742.

Corporations § 477. That the common seal was affixed to a real estate mortgage executed by a corporation was prima facie evidence that it was so affixed, and that the mortgage was executed by proper authority.—*Ibid.*

Corporations § 444. Both at common law and under above section, requiring corporate deeds to be attested by the secretary with the corporate seal, a deed executed in the corporate name by the president and other members, without such seal, is insufficient, although the word "seal" occurs after the signatures.—*Caldwell v. Morganton Manufacturing Co.*, 121 N. C. 339, 28 S. E. 475.

When void as to torts.

Corporations § 480. Where the holder of a judgment against a corporation for tort failed to commence an action to enforce his claim within sixty days after the registration of a deed of trust subsequently given by the judgment debtor, he cannot claim a preference.—*Joyner v. Reflector Co.*, 176 N. C. 274, 97 S. E. 44.

Corporations § 480. An action brought by creditors of a bank within sixty days of the filing of an assignment for the benefit of creditors, to recover their debts, avoids such an assignment.—*Fisher v. Western Carolina Bank*, 132 N. C. 769, 44 S. E. 601. *Williams v. West Asheville & S. S. Ry. Co.*, 126 N. C. 918, 36 S. E. 189.

61. Conditional sale contracts. Contracts, in writing, for the purchase of personal property by corporations, providing for a lien on the property or the retention of the title thereto by the vendor as a security for the purchase price, or any part thereof, are sufficiently executed if signed in the name of the corporation by the president, secretary or treasurer in his official capacity, and may be acknowledged and ordered to registration as is provided by law for the execution, acknowledgment and registration of deeds by natural persons.

C. S., s. 1139; 1909, c. 335, s. 1.

62. Mortgaged property subject to execution for labor, clerical services, and torts. Mortgages of corporations upon their property or earnings cannot exempt said property or earnings from execution for the satisfaction of any judgment obtained in courts of the state against such corporations for labor and clerical serv-

ices performed, or torts committed whereby any person is killed or any person or property injured.

C. S., s. 1140; Rev., s. 1131; Code, s. 1255; 1897, c. 334; 1901, c. 2, s. 3; 1915, c. 201, s. 1.

Claims for "material furnished" formerly allowed were abolished by amendment to Code, § 1255, in 1897.

Master & Servant § 82. A superintendent of a mill, whose duties consist of overseeing the milling operations, keeping books, etc., but who does not perform any manual labor, does not perform "labor" within the meaning of the statute.—*Moore v. American Industrial Co.*, 138 N. C. 304, 50 S. E. 687. (This case was decided prior to the insertion by the laws of 1915, c. 201, the words "and clerical services performed.")

Corporations § 483. Section confers no lien upon the proceeds of a sale of a factory's cloth and yarn for coal furnished to and used by it in their manufacture.—*Norfleet v. Tarboro Cotton Factory*, 172 N. C. 833, 89 S. E. 785.

Corporations § 480. Section confers no lien or priority upon the holder of a tort judgment against a corporate deed of trust subsequently given.—*Joyner v. Reflector Co.*, 176 N. C. 274, 97 S. E. 44.

Corporations § 566. The preference given for labor performed over prior mortgages of corporations applies only to the laborers employed by the corporation in carrying on its ordinary business, including repairs and upkeep, and does not confer such preference upon contractors who employ labor under a contract to place betterments upon the company's property.—*Cox v. New Bern Lighting & Fuel Co.*, 152 N. C. 165, 67 S. E. 477.

Insolvency § 119. A mortgagee is entitled to assert priority of his mortgage given by a third party on lumber sold to insolvent company with his consent, even as against labor liens against that company.—*Walker v. Linden Lumber Co.*, 170 N. C. 460, 87 S. E. 331.

Insolvency § 119. Section held not to give preference for work done by laborers of an insolvent corporation under a contract assigned to it by one who had given security for the performance thereof.—*Roberts v. Bowen Manufacturing Co.*, 169 N. C. 27, 85 S. E. 45.

Corporations § 480. One who takes a mortgage upon corporation property for money loaned does so with the knowledge that his lien may be displaced in favor of laborer's liens or judgments for tort and the expenses of receivership or of other court proceedings to wind up the corporation in cases of insolvency.—*Humphrey Bros. v. Buell-Crocker Lumber Co.*, 174 N. C. 514, 93 S. E. 971.

Corporations § 480. When a corporation has acquired the property involved subject to a valid recorded purchase-money mortgage, the property is an asset of the corporation only to the extent of its equity of redemption and the lien of the mortgagee is superior to all other claims.—*Ibid.*

Receivers § 178. Where the road of an insolvent railroad company is sold at a foreclosure sale, and an action for injuries received while it was operated by such company is brought against the purchaser, and the receiver of the former company is made a party, the insolvent company is not a necessary party thereto.—*Howe v. Harper*, 127 N. C. 356, 37 S. E. 505.

Corporations § 482. A purchaser at a foreclosure sale takes subject to a judgment against the corporation for a tort committed after the making of the mortgage, notwithstanding the judgment was obtained subsequent to the sale.—*Wilmington & W. R. Co. v. Burnett*, 123 N. C. 210, 31 S. E. 602.

Corporations § 482. A purchaser of lands at a foreclosure sale, with notice of a claim that existed against the corporation mortgagor at the time the mortgage was executed, acquires no rights as against the creditor.—*Langston v. Greenville Land & Improvement Co.*, 120 N. C. 132, 26 S. E. 644.

Where, pending a suit to foreclose a railroad mortgage in the federal court, a passenger recovered a judgment in a state court against the railroad company for alleged personal injury, resulting from assault and battery committed on him by the railroad company's conductor, the judgment constitutes a prior lien on the railroad company's property to that of the mortgage foreclosed.—*Trust Company v. N. S. R. Co.*, 183 Federal 803.

63. Gas and electric power companies. Gas and electric light and power companies have power to lay, extend, construct, erect, maintain, repair and remove all necessary or convenient towers, poles, cable wires, conductors, lamps, fixtures, appliances, and appurtenances upon, through and over any roads, streets, avenues, lanes, alleys and bridges within and near any city, town or village where said company is located; and all such roads, streets, lanes, alleys and bridges shall be left in as good condition as they were in at the time of using them as aforesaid: Provided, that the rights and privileges conferred in this section shall not be exercised unless the authorities of such city, town or village first give their consent, and afterwards the said authorities shall have full power to control the location of all towers, poles, wires, conductors and all other fixtures, appliances and appurtenances belonging to or operated by any of said companies.

C. S., s. 1141; Rev., s. 1133; 1889 (Pr.), c. 35, s. 2.

Eminent Domain § 119. The use of a street for laying pipes, etc., in furnishing water, lights, etc., does not impose any additional servitude beyond those reasonably included in the dedication of all streets.—*Smith v. City of Goldsboro*, 121 N. C. 350, 28 S. E. 479.

64. No title by possession of right of way. No railroad, plank road, turnpike or canal company may be barred of, or presumed to have conveyed, any real estate, right of way, easement, leasehold, or other interest in the soil which has been condemned, or otherwise obtained for its use, as a right of way, depot, station-house or place of landing, by any statute of limitation or by occupation of the same by any person whatever.

C. S., s. 434; Rev., s. 388; Code, s. 150; C. C. P., s. 29; R. C., c. 65, s. 23.

Railroads § 82. No railroad company shall be barred of or presume to have conveyed any right of way which may have been condemned or otherwise obtained by any statute of limitation, or by any occupation of the same by any person, the possession by individuals of land covered by a railroad right of way cannot operate as a bar to or be the basis for any presumption of abandonment by the railroad of its right of way.—*Seaboard Air Line Ry. Co. v. Olive*, 142 N. C. 257, 55 S. E. 263.

Railroads § 82. The right of way is dedicated to public use. It is for this reason protected against loss by adverse possession or permissive possession of its right of way.—*Muse v. Seaboard Air Line Ry. Co.*, 149 N. C. 443, 63 S. E. 102.

Railroads § 82. The provision that no railroad shall be barred by limitations as to its right of way by occupation of another, held to have no application where a city is merely contending for the right to require the railroad to conform its grade to that of crossing streets.—*Atlantic Coast Line R. Co. v. City of Goldsboro*, 155 N. C. 356, 71 S. E. 514. The railroad company appealed to the Supreme Court of the United States and the decision was affirmed. Below is a digest of the Supreme Court's opinion:

Neither the contract nor due process of law clause of the federal constitution prevents a municipality from forbidding a railroad company, through whose acquiescence a part of its right of way through a city has become the city's principal business street to shift cars on the tracks lying in the heart of the city except during specified hours, or permit cars to stand there for more than five minutes and by requiring the tracks to conform to the street grade and the spaces between the rails to be filled in except at street intersections.—*Atlantic Coast Line R. Co. v. City of Goldsboro*, 232 U. S. 548, 58 Law. Ed. 721, 34 S. Ct. 364.

Railroads § 82, Adverse Possession § 85. A railroad company was not barred, and no presumption of abandonment or release of its right of way arose, by reason of the occupation or use thereof by the owner of the land.—*Norfolk Southern R. Co. v. Stricklin*, 264 Federal 546.

65. No title by possession of public ways. No person or corporation shall ever acquire any exclusive right to any part of a public road, street, lane, alley, square or public way of any kind by reason of any occupancy thereof or by encroachment upon or obstructing the same in any way, and in all actions, whether civil or criminal, against any person or corporation on account of an encroachment upon or obstruction or occupancy of any public way it shall not be competent for a court to hold that such action is barred by any statute of limitations.

C. S., s. 435; Rev., s. 389; 1891, c. 224.

Adverse Possession § 4. Title to land could be acquired by adverse possession as against a municipal corporation prior to the enactment of this statute.—*Town of Lumberton v. Branch et Ux.*, 180 N. C. 249, 104 S. E. 460.

Limitation of Actions § 6. One not entitled to acquire title by possession to a part of a public square of a county.—*Gates County v. Hill*, 158 N. C. 584, 73 S. E. 804.

See *Threadgill v. Wadesboro*, 170 N. C. 642, 87 S. E. 521; *Tillery v. Whiteville Lumber Co.*, 172 N. C. 296, 90 S. E. 196.

66. Use of public highways. Any duly incorporated company possessing the power to construct telegraph or telephone lines, lines for the conveying of electric power or for light, either or all, has the right to construct, maintain and operate such lines along any railroad or other public highway, but such lines shall

be so constructed and maintained as not to obstruct or hinder the usual travel on such railroad or other highway.

C. S., s. 1695; Rev., s. 1571; Code, s. 2007; 1899, c. 64, s. 1; 1903, c. 562; 1874-5, c. 203, s. 2.

Eminent Domain § 120. Where, by the construction of its telegraph line on a railroad right of way, defendant imposed an additional burden on the fee, and the owner of the fee, which was subject to the easement of the railroad, is entitled to compensation for the additional burden.—*Query v. Postal Telegraph-Cable Co.*, 178 N. C. 639, 101 S. E. 390. To the same effect.—*Teeter v. Postal Telegraph Company*, 172 N. C. 783, 90 S. E. 941.

Eminent Domain § 45. A corporation maintaining a line on its right of way to convey electric power may acquire the right to cut trees on contiguous property dangerous to the line.—*Yadkin River Power Company v. Wissler*, 160 N. C. 269, 76 S. E. 267.

Eminent Domain § 56. An electric light or street railway company cannot, by eminent domain, acquire the right to cut down trees in the edge of the sidewalk for mere convenience in erecting poles and wires; it not being necessary therefor.—*Brown v. Asheville Electric Light Company*, 133 N. C. 533, 51 S. E. 62.

67. Electric and hydro-electric power companies may appropriate highways; conditions. Every electric power or hydro-electric power corporation which may exercise the right of eminent domain under the chapter Eminent Domain, where in the development of electric or hydro-electric power it shall become necessary to use or occupy any public highway, or any part of the same, after obtaining the consent of the board of county commissioners of the county in which such public highway is situate, shall have power to appropriate said public highway for the development of electric or hydro-electric power: Provided, that said electric power or hydro-electric power corporation shall construct an equally good public highway, by a route to be selected by and subject to the approval and satisfaction of the board of county commissioners of the county in which said public highway is situated: Provided further, that said company shall pay all damages to be assessed as provided by law, by the damming of water, the discontinuance of the road, and for the laying out of said new road.

C. S., s. 1696; 1911, c. 114.

68. Acquisition of right of way by contract. Such telegraph, telephone, or electric power or lighting company has power to contract with any person or corporation, the owner of any lands or of any franchise or easement therein, over which its lines are proposed to be erected, for the right of way for planting, repairing and preservation of its poles or other property, and for the erection and occupation of offices at suitable distances for the pub-

lie accommodation. This section shall not be construed as requiring electric power or lighting companies to erect offices for public accommodation.

C. S., s. 1697; Rev., s. 1572; Code, s. 2008; 1899, c. 64, 1903, c. 562, ss. 1, 2; 1874-5, c. 203, s. 3.

Eminent Domain § 149. Where a telegraph company constructed its line over lands in which plaintiff owned the fee, subject to a railroad company's easement for a right of way, plaintiff is entitled to a reasonable compensation for the additional burden.—*Query v. Postal Telegraph-Cable Company*, 178 N. C. 639, 101 S. E. 390; *Teeter v. Postal Telegraph Company*, 172 N. C. 783, 90 S. E. 941. To the same effect: *Hodges v. Western Union Telegraph Company*, 133 N. C. 225, 45 S. E. 572; *Narron v. Wilmington & Weldon R. R. Co.*, 122 N. C. 856, 29 S. E. 356.

69. Deeds of easements. All persons, firms, or corporations now owning or hereafter acquiring any deed or agreement for rights of way and easements of any character whatsoever shall record such deeds and agreements in the office of the register of deeds of the county where the land affected is situated. Where such deeds and agreements may have been acquired, but no use has been made thereof, the person, firm, or corporation holding such instrument, or any assignment thereof, shall not be required to record them until within ninety days after the beginning of the use of the easements granted thereby. If after ninety days from the beginning of the easement granted by such deeds and agreements the person, firm, or corporation holding such deeds or agreements has not recorded the same in the office of the register of deeds of the county where the land affected is situated, then the grantor in the said deed or agreement may, after ten days notice in writing served and returned by the sheriff or other officer of the county upon the said person, firm, or corporation holding such lease or agreement, file a copy of the said lease or agreement for registration in the office of the register of deeds of the county where the original should have been recorded, but such copy of the lease or agreement shall have attached thereto the written notice above referred to, showing the service and return of the sheriff or other officer. The registration of such copy shall have the same force and effect as the original would have had if recorded: Provided, said copy shall be duly probated before being registered.

Nothing in this section shall require the registration of the following classes of instruments or conveyances, to wit:

1. It shall not apply to any deed or instrument executed prior to January first, one thousand nine hundred and ten.

2. It shall not apply to any deed or instrument so defectively executed or witnessed that it cannot by law be admitted to probate or registration, provided that such deed or instrument was executed prior to the ratification of this act.

3. It shall not apply to decrees of a competent court awarding condemnation or confirming reports of commissioners, when such decrees are on record in such courts.

4. It shall not apply to local telephone companies, operating exclusively within the state, or to agreements about alley-ways.

Any person, firm, or corporation knowingly and willfully violating this section shall be guilty of a misdemeanor, and each day's continuance of this violation shall be a separate offense.

This section shall not apply to Alleghany, Harnett, Lee, Surry and Wilkes counties.

C. S., s. 3316; 1917, c. 148; 1919, c. 107.

70. Plats and subdivisions. Any person, firm, or corporation, owning land in this state, who may desire to subdivide the same into smaller tracts or lots for the purpose of sale or other purpose, may have a plat or subdivision of such land recorded in the office of the register of deeds of the county in which such land or any part thereof is situated, upon proof upon oath by the surveyor making such plat or subdivision that the same is in all respects correct and was prepared from an actual survey by him made, giving the date of such survey and the variation of the magnetic needle. Such plats or subdivisions when so proven, and probated as deeds and other conveyances, shall be recorded either by transcribing a correct copy thereof upon or by permanently attaching the original to the records, or in a book to be designated the Book of Plats; and when so recorded shall be duly indexed.

C. S., s. 3318; 1911, c. 55, s. 2.

Vendor & Purchaser § 130. Despite the above section, merely regulating priorities as between two conflicting dedications, where owner platted land, showing streets and alleys, and sold lots with reference to plat, but individual purchasers deeded relinquishment of rights in streets or alleys, while public never accepted, opened, or used such streets, and city authorities made formal renunciation, owner's title to all land is perfect, and he can compel acceptance by purchaser.—*Wittson v. Dowling*, 179 N. C. 542, 103 S. E. 18.

71. Deeds of trust and mortgages, real and personal. No deed of trust or mortgage for real or personal estate shall be valid at law to pass any property as against creditors or purchasers for

a valuable consideration from the donor, bargainor or mortgagor, but from the registration of such deed of trust or mortgage in the county where the land lies; or in case of personal estate, where the donor, bargainor or mortgagor resides; or in case the donor, bargainor or mortgagor resides out of the state, then in the county where the said personal estate, or some part of the same, is situated; or in case of choses in action, where the donee, bargainee or mortgagee resides. For the purposes mentioned in this section the principal place of business of a domestic corporation is its residence.

C. S., s. 3311; Rev., s. 982; Code, s. 1254; R. C., c. 37, s. 22; 1829, c. 20; 1909, c. 874, s. 1.

Mortgages § 90. The correct recording of a mortgage as between the parties is immaterial, being required by the above section only in reference to the rights and claims of creditors and subsequent purchasers. *Eley v. Norman*, 175 N. C. 294, 95 S. E. 543.

Sales § 472. Conditional sales are regarded as chattel mortgages and void as to creditors and purchasers, except from registration.—*Observer Company v. Little*, 175 N. C. 42, 94 S. E. 526.

Sales § 472. Defendant trustee under an assignment for benefit of creditors was a "purchaser for value," and his title under assignment recorded prior to contract of conditional sale should be preferred to that of seller.—*Coble v. Wharton*, 177 N. C. 323, 98 S. E. 818.

Chattel Mortgages § 87. A sawmill and fixtures described in conveyance and trust deed as personal property, and not shown to be annexed to the land, are "personal property" within the registration law.—*Bank of Cole-rain v. Cox*, 171 N. C. 76, 87 S. E. 967.

Chattel Mortgages § 87. Registration in another county than in which mortgagor resides is unauthorized.—*Foy & Shemwell v. Hurley*, 172 N. C. 575, 90 S. E. 582.

Mortgages § 175. An instrument, sufficient as a mortgage to pass title, does not affect any land in a county in which the mortgage was not recorded as against creditors of the mortgagor.—*Williamson v. Bitting*, 159 N. C. 321, 74 S. E. 808.

Mortgages § 90. Although section provides that a mortgage shall be a lien only from its registration as between the parties to a mortgage or deed, the instrument is valid without registration; and it is also valid as against the personal representative of the mortgagor.—*McBrayer v. Har-rill*, 152 N. C. 712, 68 S. E. 204.

Chattel Mortgages § 150. Where a chattel mortgage on a mule was properly registered in the county of the mortgagor's residence, it constituted a valid lien on the mule wherever it could be found so as to entitle the mortgagee to maintain trover against a purchaser from the mortgagor; such purchaser having disposed of the mule and appropriated the proceeds.—*Smoak & McCreary v. Sockwell*, 152 N. C. 503, 67 S. E. 994.

Chattel Mortgages § 139. A trust deed on crops to secure pre-existing debts constitute the holders purchasers for value within the registration laws and it requires prior registration of other deeds of trust or mortgages to affect their interests as such.—*Odom v. Clark, Neville and Randolph*, 146 N. C. 544, 60 S. E. 513.

Bankruptcy, § 166. A chattel mortgage registered long after its execution, and within four months of the petition in bankruptcy, is a preference, if the mortgagees knew of the insolvency of the mortgagors.—*Brigman v. Covington*, 219 Federal 500.

NOTE. Where a conveyance is made of practically entire estate of grantor by mortgage, or deed of trust, to secure pre-existing debts, such conveyance will be construed to be an assignment and it must be done in the manner prescribed in Chapter 28, Consolidated Statutes, entitled Debtor and Creditor.—*National Bank of Greensboro v. Gilmer*, 116 N. C. 684, 22 S. E. 2. And where an assignment is made and the provisions of C. S., chapter 28, are not observed, the assignment is void. *Odom v. Clark*, 146 N. C. 544, 60 S. E. 513. The courts will not construe a mortgage to be an assignment when the transaction, evidenced by the mortgage, was in good faith; where the conveyance was intended as a mortgage; where the property conveyed greatly exceeded the debt intended to be secured; and where a material part of the debt secured was based upon money or other things of value passing to the grantor at the time of the execution of the mortgage.—*Wooten v. Taylor*, 159 N. C. 604, 76 S. E. 11.

72. Conditional sales of personal property. All conditional sales of personal property in which the title is retained by the bargainor shall be reduced to writing and registered in the same manner, for the same fees and with the same legal effect as is provided for chattel mortgages, in the county where the purchaser resides, or, in case the purchaser shall reside out of the state, then in the county where the personal estate or some part thereof is situated, or in case of choses in action, where the donee, bargainee or mortgagee resides.

C. S., s. 3312; Rev., s. 983; Code, s. 1275; 1891, c. 240; 1883, c. 342.

Bankruptcy § 268. A seller in an unrecorded conditional sale contract cannot recover the property or the value, where the property was delivered to the buyer who was adjudged a bankrupt, and where the trustee in bankruptcy sold the property.—*Hinton v. Williams*, 170 N. C. 115, 86 S. E. 994.

Sales § 457. A contract whereby the owner of goods delivered them to another, the owner retaining title, and the one receiving the goods agreeing to sell them and pay to the owner a specified portion of the price for which they were sold, created a mere agency and was not a conditional sale.—*Lance v. Butler*, 135 N. C. 419, 47 S. E. 488.

See cases under preceding section.

NOTE. If the property conveyed by the chattel mortgage or reserved in the conditional sale be machinery or any other property which, in use, will be fixed or attached to the land, it might be well to register the mortgage or conditional sale contract in the county wherein the property is to be situate as well as in the county wherein the mortgagor or purchaser under the conditional sale contract resides, if a natural person; and the county wherein the corporation has its principal office, if the mortgagor or purchaser under the conditional sale contract be a corporation.

The cost of registration is trifling and the benefits real.

73. Conditional sales or leases of railroad property. When any railroad equipment and rolling stock is sold, leased or loaned on the condition that the title to the same, notwithstanding the pos-

session and use of the same by the vendee, lessee, or bailee, shall remain in the vendor, lessor or bailor until the terms of the contract, as to the payment of the installments, amounts or rentals payable, or the performance of other obligations thereunder, shall have been fully complied with, such contract shall be invalid as to any subsequent judgment creditor, or any subsequent purchaser for a valuable consideration without notice, unless—

1. The same is evidenced by writing duly acknowledged before some person authorized to take acknowledgments of deeds.

2. Such writing is registered as mortgages are registered, in the office of the register of deeds in at least one county in which such vendee, lessee or bailee does business.

3. Each locomotive or car so sold, leased or loaned has the name of the vendor, lessor, or bailor, or the assignee of such vendor, lessor or bailor plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

This section shall not apply to or invalidate any contract made before the twelfth day of March, one thousand eight hundred and eighty-three.

C. S., s. 3313; Rev., s. 984; Code, s. 2006; 1883, c. 416; 1907, c. 150, s. 1.

74. Synopsis of lien law. Below is a synopsis of the sections of the lien law of North Carolina affecting corporations. The complete lien law is contained in Chapter 49, Consolidated Statutes.

NOTE. Every building constructed, repaired or improved, with the necessary lot on which it be situate; and every lot, farm or vessel, and every kind of property, real or personal, shall be subject to a lien for the payment of all debts contracted for work done on the same or material furnished. C. S. 2433.

Any mechanic or artisan making or repairing any article of personal property at the request of the owner or of any person lawfully in possession thereof is entitled to a lien on the article so made or repaired; may retain possession thereof; and after 30 days, if the debt be not over fifty dollars, and after 90 days if the debt be over fifty dollars, may proceed to enforce the lien by selling the property after due advertisement. C. S. 2435.

Laborers performing work on logs, lumber, wood pulp, acid wood, tanbark, etc., have a lien on the subject matter of their labor. C. S. 2436.

Sub-contractors and laborers who furnish labor or material for building, altering or repairing a house, have a lien on the house and the lot on which it be situate (C. S. 2437), but must give notice of such claim to the owner or lessee of the building before he shall have settled with the contractor. C. S. 2438.

Contractor before receiving any pay, to furnish to the owner or his agent, a list of indebtedness to laborers and material men. C. S. 2439.

Laborer or material man performing work on or furnishing material for

building, vessel or railroad, may furnish to owner or his agents before the latter shall have paid the contractor, an itemized statement of the amounts due for labor and materials; and upon giving such notice shall be entitled to all liens and benefits which would have accrued had the contractor given notice to the owner or his agents of such indebtedness. C. S. 2440, 2441.

If money then due from owner to the contractor be not sufficient to discharge in full said liens, the same shall be paid pro rata. C. S. 2442.

Contractor, failing to furnish said notice to owner and shall fail to pay laborers and material men, is guilty of a misdemeanor. C. S. 2443.

Laborers employed by a contractor in building a railroad may give to railroad company notice of claim against contractor within twenty days after performance of labor (thirty days for material men after furnishing materials) and the railroad company shall be liable for the payment of such labor or materials. Notice may be served on engineers, superintendent or agent of railroad company. Suit must be brought within ninety days after such notice. C. S. 2444.

Contractor on municipal building or street or road improvement must give bond for the payment of all work done or materials furnished. C. S. 2445.

Liens on vessels.—C. S. 2446. For labor loading and unloading vessels.—C. S. 2447. Filing lien and laborers' notice to master.—C. S. 2448 to 2458. Liens on articles warehoused.—C. S. 2459, 2460. Liens on baggage in favor of hotels, boarding houses, etc.—C. S. 2461 to 2463. Liens in favor of livery stable keepers.—C. S. 2464 to 2466.

WHERE AND WHEN TO FILE LIEN. Liens against personal property, not exceeding two hundred dollars, may be filed in the office of the nearest justice of the peace; if over two hundred dollars, or against any real property or interest therein, in the office of the clerk of the court of the county where the labor was performed or the materials furnished.—C. S. 2469.

Liens must be filed within six months after labor done or materials furnished, except where the statute giving the lien prescribes a shorter period, in which case the shorter limitation governs.—C. S. 2470. Liens to have priority according to the date of filing notice with justice of the peace or clerk of superior court.—C. S. 2471. But lien for labor done on a crop shall relate to the commencement of the work.—C. S. 2472.

Suits to enforce liens (unless otherwise provided in the statute giving the lien) must be commenced within six months from date of filing notice, except where the debt does not fall due within six months, suits may be brought within 30 days after debt falls due.

For agricultural liens for advancements, etc., see C. S. 2480 to 2492.

ART. 4. DIRECTORS AND OFFICERS.

75. Directors. The business of every corporation shall be managed by its directors, who must be at least three in number, and at all times bona fide stockholders in case the corporation is one issuing stock. A corporation may, by its certificate of incorporation or by-laws, determine the number of shares a stockholder must own to qualify him as a director. The directors shall be

chosen annually by the stockholders at the time and place provided in the by-laws, and shall hold office for one year and until others are chosen and qualified in their stead; but by so providing in its certificate of incorporation, a corporation may classify its directors in respect to the time for which they will severally hold office, the several classes to be elected for different terms, but no class may be elected for a shorter period than one year, or for a longer period than five years, and the term of office of at least one class must expire in each year. A corporation which has more than one kind of stock may, by so providing in its certificate of incorporation, confer the right to choose the directors of any class upon the stockholders of such class, to the exclusion of the others. One director of every corporation of this state shall be, and only one need be, an actual resident of the state, notwithstanding the provisions of the charter or any other act.

C. S., s. 1144; Rev., ss. 1147, 1148; 1901, c. 2, ss. 14, 44.

Corporations § 310. Irrespective of their actual knowledge of a corporation's condition, directors thereof are responsible for damages sustained by stockholders from their negligence, fraud, or deceit, and are not excused, by their good faith alone, for lack of proper care, attention, and circumspection in conducting the corporate affairs, which is exacted of them as trustees. *Anthony v. Jeffress*, 172 N. C. 378, 90 S. E. 414.

Corporations § 310. Although directors of corporations are not expected to attend to current business, they must at their peril give such attention to and so manage the affairs of the company that they may be able at all times to know what their executive officers, agents, and fellow directors are doing, and they are liable to the corporation or its legal representatives, for losses occasioned by a breach of such duty.—*Besseliu v. Brown*, 177 N. C. 65, 97 S. E. 743.

Corporations § 310. Directors of a corporation are not liable for loss to the corporation, resulting from honest mistakes made in the exercise of their authority, or for mistakes of subordinate officers.—*Braswell v. Pamlico Ins. & Banking Co.*, 159 N. C. 628, 75 S. E. 813.

Corporations § 307. Directors of a corporation are trustees of its property for the benefit of the corporate creditors, as well as shareholders; it being their duty to administer the trust for the benefit of all parties concerned.—*Pender v. Speight*, 159 N. C. 612, 75 S. E. 851.

76. Officers, agents, and vacancies. Every corporation organized under this chapter shall have a president, secretary, and treasurer, to be chosen either by the directors or stockholders, as the by-laws direct, and they shall hold office until others are chosen and qualified in their stead; the president shall be chosen from among the directors; the secretary shall record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as are assigned to him; the treasurer may be required to give bond for the faithful dis-

charge of his duty in such sum, and with such surety or sureties, as are required by the by-laws. Any two of these offices may be held by the same person, if the body electing so determine. The corporation may have such other officers and agents, who shall be chosen in the manner and hold office for the terms, and upon the conditions, prescribed by the by-laws or determined by the board of directors. Any vacancy occurring among the directors, or in the office of president, secretary or treasurer, shall be filled in the manner provided for in the by-laws; in the absence of such provision the vacancy shall be filled by the board of directors.

C. S., s. 1145; Rev., ss. 1149, 1150, 1151; 1901, c. 2, ss. 15, 16, 17.

77. Books to be audited on request of stockholders. Upon request of twenty-five per cent of the stockholders, or of any stockholder or stockholders owning twenty-five per cent of the capital stock, of a private corporation organized under the laws of North Carolina and doing business in this state, it is the duty of the officers of the corporation to have all of its books audited by a competent accountant, so that its financial status may be ascertained. Upon refusal or failure of the corporation to commence the auditing of its books within thirty days after such request, the requesting stockholder or stockholders, after ten days notice to the corporation, may apply to the judge of the district, or to the judge holding the courts of the district, in which the corporation has its residence, either at chambers or term time, at any place in the district, and the judge shall appoint an auditor and require the books to be audited at the expense of the corporation. The officers of the corporation shall render to the auditor any assistance or information they can, and give him access to all of the assets, books, papers, etc., relating to the affairs of the corporation, in order that a proper audit may be made. Upon completion of the audit the auditor shall render a statement to the corporation, and to the petitioning stockholder or stockholders.

C. S., s. 1146; 1911, c. 174, s. 1; 1913, c. 76, s. 1.

78. Loans to stockholders. No loan of money may be made to a stockholder or officer of the corporation, and if any is made, the officers who made it or assented thereto are jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation until the repayment of the sum loaned.

C. S., s. 1147; Rev., s. 1160; 1901, c. 2, s. 53.

Corporations § 30. Promoters of corporations occupy a fiduciary relation to it requiring the same good faith which law exacts of directors of corporations and other fiduciaries, and can not make a secret profit out of

their trust to the detriment of future corporation and its members.—Goodman v. White, 174 N. C. 399, 93 S. E. 906.

Section cited in Whitlock v. Alexander, 160 N. C. 465, 76 S. E. 538.

79. Reports to corporation commission. In addition to the information required to be given in the annual report of corporations to the corporation commission under the provisions of the Revenue and Machinery Acts, spaces shall be provided in such manner as the corporation commission deem proper so that each corporation, whether stock or nonstock, shall report whether the stock, if any, issued by it was issued for cash or for purchase of property, designating what property, the names of all the directors and officers, with the date of the election or appointment, terms of office, residence and postoffice address of each, the character of its business, and the name of the agent in charge thereof upon whom process against the corporation may be served; but this shall not prevent service of process on other agents authorized by law. This information, together with the amount of stock issued and outstanding by the corporation, shall be available to the public upon application to the corporation commission. After these reports have been made to the corporation commission and the excess tax thereon has been computed and determined, it is the duty of the corporation commission to certify a list of such corporations, showing amount of stock issued by each, whether owing an excess tax or not, to the state treasurer, who shall add to such excess tax, if any, the amount due by the corporation on account of franchise tax, and forward a statement of such indebtedness to the corporation for payment, under the penalties provided by law. Every corporation failing to comply with the provisions of this section shall forfeit to the state \$100, to be collected by the sheriff of the county where the principal office of the corporation is situated, in a civil action to be brought before a justice of the peace, and when collected shall be remitted by the sheriff to the corporation commission, after deducting his cost as allowed by law, which he shall collect in addition to the penalty.

C. S., s. 1148; 1913, c. 198, ss. 1, 2, 3.

Since the enactment of the Laws of 1921, chapter 40, the reports which under the Revenue and Machinery Acts were made to the Tax Commission and to the Corporation Commission are now made to the Commissioner of Revenue.

80. Secretary of state may call for special reports. The secretary of state has power to call for special reports from corporations, of the same character as their regular reports, at such times

as he may deem the public interest requires, but no fees shall be charged for filing these special reports.

C. S., s. 1149; Rev., s. 1153.

81. Secretary of state to publish list of corporations created. The secretary of state shall annually compile and publish from the records of his office a complete alphabetical list of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office of each in this state, the name of the agent in charge thereof, the amount of authorized capital stock, the amount with which business is to be commenced, the amount issued, the date of filing the certificate, and the period for which the corporation is to continue; but the secretary of state and the corporation commission shall confer and arrange the statistics so as to prevent the same facts being embodied in the reports of both departments.

C. S., s. 1150; Rev., s. 1244; 1901, c. 2, s. 104; 1911, c. 211, s. 10; 1913, c. 198, s. 5.

82. Liability of officers failing to make reports or making false reports. If any of the officers neglect or refuse to make any report required of them by law for thirty days after written request so to do by a creditor or stockholder of the corporation, they are jointly and severally liable to the person demanding such report, for the amount of his debt if he is a creditor, or for the amount of his loss if he is a stockholder. If any report or certificate made, or any public notice given, by the officers in pursuance of the provisions of this chapter, is false in any material representation, all the officers who signed the same, knowing it to be false, are jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof, as a penalty enforceable in the courts of this state only.

C. S., s. 1151; Rev., ss. 1154, 1163; 1901, c. 2, ss. 27, 56.

83. Liability for fraud. In case of fraud by the president, directors, managers, or stockholders, in a corporation, the court shall adjudge personally liable to creditors and others injured thereby the directors and stockholders who were concerned in the fraud.

C. S., s. 1152; Rev., s. 1155; Code, s. 686; 1901, c. 2, s. 107.

Corporations § 310. Irrespective of their actual knowledge of a corporation's condition, directors thereof are responsible for damages sustained by stockholders by their negligence, fraud or deceit, and are not excused, by their good faith alone, for lack of proper care, attention and circumspection in conducting the corporate affairs, which is exacted of them as trustees.—Anthony v. Jeffress, 172 N. C. 378, 90 S. E. 414.

Corporations § 310. Although directors of corporations are not expected to attend to current business, they must at their peril give such attention to and so manage the affairs of the company that they may be able at all times to know what their executive officers, agents and fellow directors are doing, and they are liable to the corporation or its legal representatives for losses occasioned by a breach of such duty.—*Besselieu v. Brown*, 177 N. C. 65, 97 S. E. 743.

Corporations § 310. Directors of a corporation are not liable for loss to the corporation, resulting from honest mistakes made in the exercise of their authority, or for mistakes of subordinate officers.—*Braswell v. Pamlico Ins. & Banking Company*, 159 N. C. 628, 75 S. E. 813.

84. Joint and several liability of officers, etc.; contribution. When the officers, directors or stockholders of a corporation are liable to pay its debts, or any part thereof, any person to whom they are liable has a right of action against any one or more of them. And any such officer, director or stockholder has the right of equitable contribution in any action for that purpose against any other officer, director or stockholder who is liable with him for any amount which he has been compelled to pay as provided in this section.

C. S., s. 1153; Rev., s. 1156; 1901, c. 2, s. 90.

Corporations § 336. Where a corporation engaged in the business of commission merchant misapplies proceeds of goods sold on consignment, its officers, who knowingly participated in the wrong, are individually liable, and may be sued jointly or severally.—*Cone v. United Fruit Growers Ass'n*, 171 N. C. 530, 88 S. E. 860.

Corporations § 357. Defendants were properly joined in an action for their joint wrong as officers of a corporation in misappropriating plaintiff's money and notes.—*Virginia-Carolina Chemical Company v. Floyd*, 158 N. C. 455, 74 S. E. 465.

Corporations § 333. A clause in a corporation's articles, providing that no stockholder shall be liable for the debt, default or tort of any other stockholder, did not relieve stockholders who were also directors from liability for a joint tort or misfeasance in office, consisting of a wrongful sale of all the corporation's assets, for their individual benefit.—*McIver v. Young Hardware Company*, 144 N. C. 478, 57 S. E. 169.

85. Officers paying may enforce exoneration against corporation. An officer, director or stockholder who pays a debt of a corporation for which he is made liable by the provisions of this chapter may recover the amount paid, in an action against the corporation for money paid for its use, in which action only the property of the corporation is liable to be taken, and not the property of any stockholder, except as provided in the preceding section.

C. S., s. 1154; Rev., s. 1157; 1901, c. 2, s. 91.

86. Assets of corporation first exhausted. No sale or other satisfaction shall be had of the property of a director or stockholder

for a debt of the corporation of which he is director or stockholder until judgment be obtained therefor against the corporation and execution thereon returned unsatisfied, or until it is shown to the court that the corporation has no property available for the satisfaction of the indebtedness.

C. S., s. 1155; Rev., s. 1158; 1901, c. 2, s. 92.

ART. 5. CAPITAL STOCK.

87. Classes of stock. Every corporation has power to create two or more kinds of stock of such classes, with such designations, preferences, and voting powers or restriction or qualification thereof as are prescribed by those holding two-thirds of its outstanding capital stock; and the power to increase or decrease the stock as herein elsewhere provided applies to all or any of the classes of stock; and the preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the certificate thereof; and the holders thereof are entitled to receive, and the corporation is bound to pay thereon, a fixed yearly dividend, to be expressed in the certificate, payable quarterly, half-yearly or yearly, before any dividend is set apart or paid on the common stock, and such dividends may be made cumulative. In case of insolvency, its debts or other liabilities shall be paid in preference to the preferred stock. No corporation shall create preferred stock except by authority given to the board of directors by a vote of at least two-thirds of the stock voted at a meeting of the common stockholders, duly called for that purpose. The terms "general stock" and "common stock" are synonymous.

C. S., s. 1156; Rev., s. 1159; 1901, c. 2, s. 19; 1903, c. 660, ss. 2, 3.

Corporations § 566. A preferred stockholder of a corporation is not a creditor of the corporation, and must be confined to his rights as a stockholder.—*Weaver Power Company v. Elk Mountain Mill Company*, 154 N. C. 76, 69 S. E. 747.

Corporations § 228. Subscriptions to the capital stock of a corporation constitute a trust fund for the protection and security of its creditors.—*Goodman v. White*, 174 N. C. 399, 93 S. E. 906.

NOTE. Care should be taken in the preparation of the resolution, authorizing the issue of preferred stock, as well as in the preparation of the certificate of such stock; otherwise a situation may be created whereby the rights inherent to the various classes of stock may be other than contemplated when the preferred stock was authorized and issued.

If the preferred stock be cumulative, such fact should be definitely stated. Likewise, if it be non-cumulative, this should be explicitly stated. If it be cumulative, and the desire be to have unpaid accumulations of dividends draw interest, this should be stated. If the contrary be the purpose, it should be stated that the cumulation should not bear interest.

It should be stated definitely whether the preference applies only to earnings while the company continues in business; or whether it also carries preference to the assets, so that, in any dissolution or final distribution of the assets of the company, the preferred stock shall have priority over the common stock, not only as to dividends but also in the distribution of the assets; so that the preferred stock will be redeemed or retired at full or at par plus accumulated and unpaid dividends with interest, if such be the attributes of the stock before any distribution be made to the common stock.

Care should be taken that both resolution and certificate of stock shall state definitely whether the dividends to be paid on the preferred stock shall be all to which that stock shall be entitled during the life of the company, bearing in mind that unless otherwise stated, all shares of stock are on an equality.

It will not be difficult to find cases where the preference provided for in resolution and certificate can be construed merely into a priority of payment, and not a limit upon the amount of payment. For instance, a company may authorize and issue 7% preferred stock. The resolution and certificate may state that the holder of the preferred stock shall be entitled to receive, and the company shall be obligated to pay out of the profits and earnings, an annual dividend of 7% before any payment shall be made to the holders of the common stock. If nothing further be stated, it might well be argued that the extent of this preference is that the holder of the preferred stock should be paid 7% dividend before anything be paid to the common stock.

But the company becomes prosperous. Not only is 7% paid upon the preferred stock, but 7% and more is paid upon the common stock. The terms of the resolution and of the certificate have been complied with—7% has been paid upon the preferred stock, and 7% has been paid upon the common stock. There still remains a large sum to be distributed. Now, does this surplus go entirely to the holders of the common stock; or do the holders of the preferred and of the common alike share in this surplus?

If such be the intention, it should be so stated in resolution and certificate. If it is not the intention to allow both common and preferred stockholders to share in the dividends after 7% shall have been paid upon all the stock, then that fact should be set forth so plainly in both resolutions and certificate that there may be no controversy.

Some formula like the following is suggested:

"The holders of the preferred stock shall be entitled to be paid from the surplus earnings of the company, and the company shall be obligated to pay to the holders of the preferred stock out of its surplus earnings, an annual dividend of 7%, payable (annually, semi-annually, or quarterly, as the case may be) before any dividend shall be paid to the holders of the common stock. After the payment of such dividends on the preferred stock, and after retaining sufficient property at all times to provide for the redemption of all the preferred stock outstanding, all the other earnings of the company shall belong to and be payable to the holders of the common stock; and the only sums which shall be paid to the holders of the preferred stock shall be the dividends provided therein, and the redemption of the stock at par, if the company be dissolved; or the redemption of said stock plus the premium thereon provided, in such case, if the stock be retired prior to the dissolution of the company."

88. Issuance of capital stock of corporations without par value.
Any corporation heretofore or hereafter organized under the laws

of this state, except banks, trust companies, railroad companies and insurance companies, may, in its original certificates of incorporation, articles of association, or any amendment thereof, create shares of stock with or without nominal or par value, and may create two or more classes of stock or debentures, with such preferences, voting powers, restrictions and qualifications as shall be fixed in such certificate of incorporation, articles of association or amendment thereof. Subject to any provisions so fixed, every share without par value shall equal every other such share.

2. The provisions of law relating to the issuance of stock with par value shall apply to the issuance of stock without nominal or par value, and such corporation may issue its authorized shares without nominal or par value, for cash, property, tangible or intangible, services or expenses, as may be determined from time to time by the board of directors, subject to the provisions of the certificate of incorporation, article of association, or amendments thereof, and in case of increase in capital stock, subject to such vote of stockholders, as is now or may hereafter be fixed by law, determine the terms and manner of the disposition of the increased stock pursuant to section one thousand one hundred and thirty-one of the Consolidated Statutes of North Carolina, and when the cash or other consideration for which they are to be issued, as stated in the certificate of incorporation, articles of association or amendments thereof, has been received, such shares shall be fully paid stock and not liable to any further call or assessment thereon, shall the subscriber or holder be liable for any further payments.

3. In any case in which the law requires that the par value of the shares of stock of a corporation be stated, it shall be stated, in respect of shares without nominal or par value, that such shares are without nominal or par value, and wherever the amount of stock authorized or issued, is required to be stated, if any shares without nominal or par value are authorized, the number of shares authorized or issued of the several classes shall be stated, and it shall also be stated whether such shares are with or without nominal or par value and what the par value is of such shares as have par value.

4. Any such corporation heretofore organized, whether under a special act of legislature or otherwise, may amend its certificate

of incorporation, so as to change its certificates of stock from certificates with par value to certificates without nominal or par value, or *vice versa*.

5. The tax upon the certificate of incorporation, or extension or renewal or corporate existence, or increase of capital stock without nominal or par value, shall be the same as if each share of stock had a par or face value of one hundred dollars.

6. The intent and purpose of this act is to require a share of stock to be treated and represented, subject to lawful preferences, rights, limitations, privileges and restrictions, as a mere evidence of an aliquot part or divisional interest in the assets and earnings of the corporation issuing the same, whatever the extent or value of such assets or earnings may be, to the end that misrepresentation or misunderstanding arising through the difference between actual value of a share of stock and the value appearing on the face of the certificate therefor may be eliminated.

7. Except as otherwise provided by this act, corporations issuing shares without any par or face value under the provisions hereof, shall be and remain subject to the laws of the state now or hereafter in force relating to the formation, regulation or reorganization rights, powers and privileges of such corporation and all other laws applicable thereto.

8. That all laws and clauses of laws in conflict with this act are hereby repealed.

1921, c. 116.

89. Stock to be paid in money or money's worth; issue for labor or property. Nothing but money shall be considered as payment for any part of the capital stock of any corporation organized under this chapter, except as herein provided in case of the purchase of property or labor performed. Any corporation may issue stock for labor done or personal property or real estate or leases thereof, and, in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.

C. S., s. 1157; Rev., ss. 1159, 1160; 1901, c. 2, ss. 19, 53; 1903, c. 660, ss. 2, 3.

Corporations § 232. A valuation of property taken in payment for subscription to capital stock, which is grossly excessive and knowingly made, is a fraud on the creditors who may proceed against the stockholder as for an unpaid subscription.—*Goodman v. White*, 174 N. C. 399, 93 S. E. 906.

Corporations § 232. A grossly excessive valuation of property received

in payment of stock knowingly made may be conclusive evidence of fraud.—*Whitlock v. Alexander*, 160 N. C. 465, 76 S. E. 538. To the same effect.—*Hobgood v. Ehlen*, 141 N. C. 344, 53 S. E. 857.

For discussion of stock issued for personal services and labor, see *Hobgood v. Ehlen*, 141 N. C. 344, 53 S. E. 857.

90. Stock issued for property; how value ascertained; how stock reported. Any corporation formed under this chapter may purchase any property necessary for its business, and issue stock to the amount of the value thereof in payment therefor. The stock so issued shall be full-paid stock, and not liable to any further call, nor shall the holder thereof be liable for any further payment under any of the provisions of this chapter; and in the absence of actual fraud the judgment of the directors as to the value of the property shall be conclusive. In all statements and reports of the corporation to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the facts.

C. S., s. 1158; Rev., s. 1161; 1901, c. 2, s. 54.

Corporations § 269. Stockholder, paying for stock with property, has burden of showing that the property was taken at its true value, and that such value was approved by board of directors, acting independently in the interest of the corporation.—*Goodman v. White*, 174 N. C. 399, 93 S. E. 906.

Corporations § 232. A valuation of property taken in payment for subscription to capital stock, which is grossly excessive and knowingly made, is a fraud on the creditors who may proceed against the stockholder as for an unpaid subscription.—*Goodman v. White*, 174 N. C. 399, 93 S. E. 906.

Corporations § 269. Evidence that corporation formally valued a patent and accepted it in payment of stock held competent to show that the stock was not unpaid.—*Whitlock v. Alexander*, 160 N. C. 465, 76 S. E. 538.

Corporations § 271. Evidence held to make a question for the jury whether patents transferred to a corporation in payment of stock were worth the par value of the stock.—*Ibid.*

91. Construction companies building railroads, etc., may take stock therein; how issued, valued, and reported. Corporations having for their object the building or repairing of railroads, water, gas or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers, or any like works of internal improvement or public use, may subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporation formed for the purpose of constructing, maintaining and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work of the description aforesaid may accept in payment of any

such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor and services performed, or materials furnished to, or for, such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such installments or proportions as such directors may agree upon, full-paid stock, in full or partial performance of the whole, or any part of such subscription or purchase, and the stock so issued shall be full-paid stock, and not liable to any further call, nor shall the holder thereof be liable for any further payments. And in all statements and reports of the corporation to be published or filed, this stock shall not be stated, or reported, as being issued for cash paid to the corporation, but shall be reported and published in this respect according to the fact.

C. S., s. 1159; Rev., s. 1172; 1901, c. 2, s. 55.

92. Liability for unpaid stock. Where the capital stock of a corporation has not been paid in and the assets are insufficient to satisfy its debts and obligations, each stockholder is bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter, or such proportion of that sum as is required to satisfy such debts and obligations; but no person holding stock in any corporation in this state as executor, administrator, guardian, or trustee, or as collateral security, is personally subject to any liability as a stockholder of the corporation; but the person pledging the stock is considered as holding the same, and is liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, is liable in like manner, and to the same extent, as the testator or intestate, or the ward, or the person interested in such fund, would have been had he been living and competent to act and to hold the stock in his own name.

C. S., s. 1160; Rev., s. 1162; 1893, c. 471; 1901, c. 2, s. 22.

Corporations § 228. Subscriptions to capital stock of a corporation constitute a trust fund for the protection and security of its creditors.—*Goodman v. White*, 174 N. C. 399, 93 S. E. 906.

Corporations § 247. Debts due by corporation are not abrogated, because it abandons corporate enterprise, and unpaid subscriptions to stock continue to be assets of the corporation, a trust fund to which creditors may resort.—*Raleigh Improvement Company v. Andrews*, 176 N. C. 230, 96 S. E. 1032.

Corporations § 228. Sums due on subscriptions to stock constitute a trust fund for the benefit of creditors.—*Bernard v. Carr*, 167 N. C. 481, 83 S. E. 816; *Whitlock v. Alexander*, 160 N. C. 465, 76 S. E. 538.

Corporations § 233. To hold a stockholder receiving a stock dividend liable to creditors, actual fraud in its issuance must be established.—*Ibid.*

Corporations § 90. In a receiver's action to collect unpaid stock subscriptions, a subscriber cannot set-off a debt due him by the corporation.—*Vaughn-Robertson Drug Company v. Grimes-Mills Drug Co.*, 173 N. C. 502, 92 S. E. 376.

Corporations § 90. In an action on a stock subscription, evidence held to require submission to the jury to the question whether defendant had been released from his subscription during the organization of the corporation by the consent of all the other subscribers before any rights of creditors had arisen.—*Boushall v. Myatt*, 167 N. C. 328, 83 S. E. 352.

Corporations § 228. Stockholders of an insolvent corporation are liable pro rata for their unpaid subscriptions to amount necessary to liquidate the corporate debts.—*Claypoole v. McIntosh*, 182 N. C., 109, 108 S. E. 433.

93. Decrease of capital stock. The decrease of capital stock may be effected by—

1. Retiring or reducing any class of the stock.
2. Drawing the necessary number of shares by lot for retirement.
3. The surrender by every stockholder of his shares and the issue to him in place thereof of a decreased number of shares.
4. The purchase at not above par of certain shares for retirement.
5. Retiring shares owned by the corporation.
6. Reducing the par value of shares.

When a corporation decreases the amount of its capital stock as above provided, the certificate decreasing the same shall be published at least once a week for three successive weeks in a newspaper published in the county in which the principal office of the corporation is located, the first publication to be made within fifteen days after the filing of the certificate. In default of such publication the directors of the corporation are jointly and severally liable for all debts of the corporation contracted before the filing of the certificate, and the stockholders are also liable for such sums as they respectively receive of the amount so reduced. No such decrease of capital stock decreases the liability of any stockholder whose shares have not been fully paid, for debts of the corporation theretofore contracted.

C. S., s. 1161; Rev., s. 1164; 1901, c. 2, s. 32.

Corporations § 67. While notice of the reduction of capital stock is necessary to afford stockholders protection against creditors, a reduction without notice, if otherwise valid, is enforceable by the corporation against its members.—*Misenheimer v. Alexander*, 162 N. C. 227, 78 S. E. 161.

Corporations § 67. No part of capital stock can be withdrawn for the

purpose of reimbursing the principal of the capital stock until the debts of the corporation are paid.—Weaver Power Company v. Elk Mountain Mill Co., 154 N. C. 76, 69 S. E. 747.

Corporations § 67. An agreement made by the shareholders of a corporation, between themselves, to retire any of its stock before settling with the corporation's creditors, is void as against the rights of the unpaid creditors.—Pender v. Speight, 159 N. C. 612, 75 S. E. 851.

Corporations § 244. An insolvent corporation cannot buy in its own stock, and if it becomes insolvent after such purchase, the stockholder is held liable to the creditor for the purchase money received by him.—Heggie v. Peoples Building & Loan Ass'n, 107 N. C. 581, 12 S. E. 275.

Corporations § 244. A corporation cannot buy in or deal in its own stock to the prejudice of its creditors.—Ibid.

94. Certificates and duplicates. Every stockholder shall have a certificate signed by the president and treasurer, or secretary, certifying the number of shares owned by him. A corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors authorizing such issue of a new certificate may require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, as an indemnity against any claim that may be made against the corporation. A new certificate may be issued without requiring any bond when, in the judgment of the directors, it is proper to do so.

C. S., s. 1162; Rev., ss. 1165, 1166; 1885, c. 265; 1901, c. 2, s. 94.

Corporations § 94. A certificate for shares of stock is not the stock itself, but constitutes only prima facie evidence of the ownership of a number of shares.—Misenheimer v. Alexander, 162 N. C. 227, 78 S. E. 161.

Corporations § 94. Subscribing or registering of a stockholder's name on the stock book opposite the number of shares for which he has subscribed confers title thereto, and makes him a stockholder without the issuance of certificates.—Powell Bros. v. McMullan Lumber Company, 153 N. C. 52, 68 S. E. 926.

Corporations § 94. Stock of a corporation is capital, and the stock certificate only evidences that the holder has invested his means as a part of the capital.—Weaver Power Company v. Elk Mountain Mill Co., 154 N. C. 76, 69 S. E. 747.

Corporations § 109. The method regulating the manner of reissuing certificates of stock of an incorporated company where the same have been lost, and requiring an indemnity bond from the person asking a reissue of a lost certificate, and permitting a retention of the reissued certificate by the company's treasurer for five years, as a further safeguard, is a general provision applicable to all corporations.—Hendon v. North Carolina R. Company, 125 N. C. 124, 34 S. E. 227.

Corporations § 92. Tender of certificate is not necessary before instituting suit on note given for stock.—Virgin Cotton Mills v. Abernathy, 115 N. C. 402, 20 S. E. 522.

95. Action to compel issuance of duplicate certificates. When a corporation has refused to issue a new certificate of stock in place of one theretofore issued by it, or by a corporation of which it is a successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate or his legal representatives may maintain a civil action in the superior court of the county in which the principal office of the corporation is located to compel the corporation to issue a duplicate certificate in the place of the one alleged to have been lost or destroyed; and if the issues of fact arising upon the pleadings are found in favor of the plaintiff, the court shall make an order requiring the corporation or other party, within such time as it designates, to issue and deliver to the plaintiff a new certificate for the number of shares of the capital stock of the corporation which have been found to be owned by the plaintiff. In making the order the court shall direct that the plaintiff deposit such security as to the court appears sufficient to indemnify any person other than the plaintiff, who shall thereafter appear to be the lawful owner of such certificate stated to be lost or destroyed; and the court may also direct publication of such notice, either preceding or succeeding the making of such final order, as it deems proper. Any person who thereafter claims any rights under the certificate so lost or destroyed shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order.

C. S., s. 1163; Rev., s. 1167; 1901, c. 2, s. 95.

Corporations § 109. Where, in an action against a railroad company, the loss of a certificate of stock in said company is alleged, and reissue of the same is asked, a denial of the allegation of loss raises a question of fact to be determined by the jury.—Hendon v. North Carolina R. Company, 125 N. C. 124, 34 S. E. 227.

96. Transfer of shares. The shares of stock in a corporation are personal property, and are transferable on the books of the corporation in the manner and under the regulations provided by the by-laws. Whenever a transfer is made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

C. S., s. 1164; Rev., s. 1168; Code, s. 689; 1901, c. 2, s. 21.

Corporations § 65. Shares of stock in a foreign corporation are personal property, and when the owner lives in this state, are taxable here.—Worth v. Commissioners of Ashe County, 90 N. C. 409; Worth v. Commissioners, 82 N. C. 420.

Corporations § 65. Shares of stock in an incorporated company may be taxed, as a distinct species of property, belonging to the holder, independently of the taxation imposed upon the value of the franchise and upon

the real and personal estate of the corporation itself.—*Belo v. Commissioners of Forsyth County*, 82 N. C. 415. See discussion of double taxation on Page 498.

Corporations § 123. The holder of stock as pledgee has priority over a subsequent attachment, though the transfer to pledgee was not entered on the corporation books.—*Bleakley v. Candler*, 169 N. C. 16, 84 S. E. 1039.

Corporations § 128. The purpose of registration is to prevent fraudulent transfers, determine membership, the right to vote, the right to participate in the management of the corporation, and the payment of dividends.—*Ibid.*

Corporations § 128. The by-laws of a corporation requiring transfers of stock on the books of the corporation, it is generally understood, are made for the purpose of protecting the corporation, and has no effect upon the legal transfer of the ownership of the stock.—*Mitchell v. Aulander Realty Company*, 169 N. C. 516, 86 S. E. 358.

Corporations § 123. Where a corporation negligently allows its stock, duly made out to an individual, to fall into the hands of the individual, who pledges it to a bona fide pledgee for value, the latter acquires title as against the corporation.—*American National Bank v. Dew*, 175 N. C. 79, 94 S. E. 708.

Corporations § 131. Where a corporation is requested to transfer stock by an agent, it must ascertain the agent's authority from his power of attorney.—*Baker v. Atlantic Coast Line R. Co.*, 173 N. C. 365, 92 S. E. 170.

Contracts § 121. An agreement between stockholders holding a majority of the shares to pool their stock by transferring it to trustees, and authorizing them to vote all such stock at corporate meetings, and to pledge it as collateral for loans, is void, as against public policy.—*Harvey v. Linville Improvement Company*, 118 N. C. 693, 24 S. E. 489.

Contracts § 121. Any agreement, which separates the beneficial ownership of corporate stock from the legal title, is contrary to public policy and void, and restrictions on the right to vote stock are not favored by courts.—*Sheppard v. Rockingham Power Co.*, 150 N. C. 776, 64 S. E. 894.

Corporations § 113. There being no statute to the contrary and the secretary of state being authorized to grant corporate charters by virtue of Const., Art. 8, Sec. 1, a provision in a charter to a telephone company that shares of the stock therein should not be transferred or sold until reported to and approved by the directors was valid, and a purchaser was not entitled to enforce a transfer over the action by the directors in good faith.—*Wright v. Iredell Telephone Co.*, 182 N. C. 308, 108 S. E. 744.

97. Assessments, sale, and notice. The directors of a corporation may, from time to time, make assessments upon the shares of stock subscribed for, not exceeding, in the whole, the par value thereof, remaining unpaid; and the sums assessed shall be paid to the treasurer at such times and by such installments as the directors direct, the directors having given thirty days notice of the assessment and of the time and place of payment, either personally, by mail, or by publication in a newspaper published in the county where the corporation is established. If the owner of any share or shares neglects to pay a sum assessed thereon for thirty days after the time appointed, for payment, the treasurer,

when ordered by the board of directors, shall sell, at public auction, such share or shares of the delinquent owner as will pay any assessment due from him, with interest, and all necessary incidental charges; and shall transfer the share or shares sold to the purchaser, who is entitled to a certificate therefor. The treasurer shall give notice of the time and place appointed for the sale, and of the sum due on each share, by advertising the same once a week for three successive weeks before the sale in a newspaper published in the county where the principal office of the corporation is located, at the courthouse door, and by mailing a notice thereof to the last known postoffice address of the delinquent stockholder.

C. S., s. 1165; Rev., ss. 1169, 1170, 1171; 1901, c. 2, ss. 23, 24, 25.

Corporations § 93. The by-laws of a corporation provided that, if any stockholder failed to pay his installment on stock subscription when called by the directors for two months, his stock be declared forfeited, and sold for his account, publicly, after 30 days' notice, and the net proceeds be applied first to the payment of all amounts due on his stock, and the balance paid to him: Provided, that the forfeiture and sale of stock of a delinquent should not release him from his subscription. *Held*, that such by-law was reasonable, and a subscriber whose stock was duly advertised and sold under such by-law, after notice by mail, had no right to complain; the law empowering corporations to provide by their by-laws, *inter alia*, "the mode of selling shares for non-payment of assessments."—*Elizabeth City Cotton Mills v. Dunstan*, 121 N. C. 12, 27 S. E. 1001.

Corporations § 93. Where plaintiff's stock in defendant's corporation was wrongfully sold at public sale for non-payment of a call, he was entitled to treat the sale as invalid, and compel the corporation to issue similar stock to him, on payment of the amount of the call, with interest to the date of the tender and cost of advertisement to that date.—*Wilson v. Duplin Tel. Co.*, 139 N. C. 395, 52 S. E. 62.

98. One corporation may purchase stock, etc., of another. A corporation may purchase stock, securities or other evidences of indebtedness created by any other corporation or corporations of this or any other state, and while owner of such may exercise all the rights, powers and privileges of ownership.

C. S., s. 1166; Rev., s. 1173; 1903, c. 660, s. 3.

The former rule, stated in *Meares v. Monroe Land & Improvement Co.*, 126 N. C. 662, 36 S. E. 130, was that a corporation could not hold stock in another corporation unless charter so provided.

99. Mutual corporations may create stock. A mutual corporation, upon the consent in writing of all its members, may provide for and create a capital stock and may provide for the payment of the stock, and fix and prescribe the rights and privileges of the stockholders therein not inconsistent with law.

C. S., s. 1167; Rev., s. 1245; 1901, c. 2, s. 105.

ART. 6. MEETINGS, ELECTIONS AND DIVIDENDS.

100. Place of stockholders' and directors' meetings. The meetings of the stockholders of every corporation of this state shall be held at the principal office in this state. The directors may hold their meetings, and have an office and keep the books of the corporation (except the stock and transfer books) outside the state. Every corporation shall maintain a principal office in this state, and have an agent in charge thereof.

C. S., s. 1168; Rev., s. 1179; 1901, c. 2, s. 49.

Corporations § 503. While a domestic corporation may be authorized to maintain an office at a place beyond the state, at which some corporate meetings may be held, it is also required to maintain a principal office in some county in this state, which fixes its place of residence therein for the purposes of suing and being sued.—*Roberson v. Greenleaf-Johnson Lumber Co.*, 153 N. C. 120, 68 S. E. 1064.

Corporations § 298. To make the proceedings of a meeting of the directors of a corporation regular, it must be at a stated time provided for in the charter or by-laws or held after notice to all the directors.—*First National Bank of Springfield v. Asheville Furniture & Lumber Co.*, 116 N. C. 827, 21 S. E. 948.

Corporations § 194. * Action taken at a called meeting of stockholders for a special purpose is not binding upon the corporation unless all stockholders had notice of the meeting.—*Asbury v. Mauney*, 173 N. C. 454, 92 S. E. 267.

Corporations § 196. Where a stockholders' meeting is called for a special purpose, action on other business is void unless all stockholders consent or action is later ratified.—*Ibid.*

Corporations § 197. Stockholders not represented at an original meeting were entitled to vote at an adjourned meeting.—*Bridgers v. Staton*, 150 N. C. 216, 63 S. E. 892.

Corporations § 194. Notice to each of the members of a corporation of the time and place of holding the meeting of stockholders is essential to the meeting, unless the stockholders are present in person or by proxy, or unless the time and place are definitely fixed by statute, charter or usage.—*Hill v. Atlantic and North Carolina R. Co.*, 143 N. C. 539, 55 S. E. 854.

Corporations § 194. In the absence of proof to the contrary, it will be presumed that an annual or stated meeting of the stockholders of a corporation was held in accordance with the requirements of the corporation's charter.—*Ibid.*

Corporations § 194. The proceedings of a meeting not called in the manner prescribed by law may be ratified by all the absent stockholders.—*Ibid.*

101. Meeting called by three stockholders. When, for any reason, a legal meeting of the stockholders of any corporation cannot be otherwise called, three stockholders with voting power may call such meeting by publishing in a newspaper published in the county in which the principal office in this state is located ten days notice of the time, place and purposes of the meeting, and

mailing this notice to all stockholders whose postoffice address is known or can be ascertained. A meeting so called is a legal meeting of the corporation, and if there are no officers present, the stockholders may elect officers for the meeting; and the secretary of the meeting shall record the proceedings thereof in the minute book of the corporation.

C. S., s. 1169; Rev., s. 1190; 1901, c. 2, s. 51.

102. Transfer and stock books. Every corporation shall keep at its principal and registered office in this state the transfer books, in which the transfer of stock shall be registered, and the stock books, which shall contain the names and addresses of the stockholders, and the number of shares held by them respectively, and shall at all times during the usual hours for business be open to the examination of every stockholder. These books shall be the only evidence as to who are the stockholders entitled to examine them, and to vote at elections. In case the right to vote upon any share of stock is questioned, the stock books of the corporation shall be referred to, to ascertain who are the stockholders, and in case of a discrepancy between the books, the transfer book shall control and determine who are entitled to vote.

C. S., s. 1170; Rev., ss. 1180, 1181; 1901, c. 2, ss. 38, 45.

103. Directors to produce books at election. The board of directors shall produce at the time and place of elections the transfer books and the stock books, there to remain during the election, and the neglect or refusal of the directors to produce the same after a demand therefor shall render them ineligible to any office at such election. All elections of directors held under this chapter prior to February 28, 1913, where these books were not produced, and no demand was made therefor, are ratified and confirmed and given full legal force and effect, but this ratification does not affect litigation pending on the above date.

C. S., s. 1171; Rev., s. 1180; 1901, c. 2, s. 38; 1913, c. 14.

104. Superior court may require production. The superior court may, upon proper cause shown, order any or all of the books of the corporation to be forthwith brought within this state, and kept therein at such place and for such time as is designated in such order. The charter of any corporation failing to comply with such order may be declared forfeited by the court making the order, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of the order.

C. S., s. 1172; Rev., s. 1179; 1901, c. 2, s. 49.

105. Votes stockholders entitled to; cumulative voting. Unless otherwise provided in the charter or by-laws of a corporation, at every election each stockholder is entitled to one vote in person, or by proxy duly authorized in writing for each share of the capital stock held by him, but no proxy may be voted after three years from its date; nor may there be voted at any election a share of stock which has been transferred on the books of the corporation within twenty days prior to the election. The certificate of incorporation of any corporation authorized to issue shares of capital stock may provide that at all elections of directors, managers, or trustees, each stockholder is entitled to as many votes as equal the number of his shares of stock multiplied by the number of directors, managers, or trustees to be elected, and that he may cast all of his votes for a single director, manager, or trustee, or may distribute them among the number to be voted for, or any two or more of them, as he sees fit. This right of cumulative voting may be exercised in the absence of charter provision when at the time of the election the stock transfer book of such corporation discloses, or it otherwise appears, that more than one-fourth of the capital stock of the corporation is owned or controlled by one person. A stockholder owning or controlling more than twenty-five per cent of the stock has the same right to vote cumulatively as any other stockholder; and no amendment of the charter or by-laws of a corporation can abrogate or abridge any right herein conferred. The right to vote cumulatively cannot be exercised unless some stockholder announces in open meeting, before the voting for directors, trustees, or managers begins, his purpose to exercise such right, and then every other stockholder may likewise vote cumulatively.

C. S., s. 1173; Rev., ss. 1183, 1184; 1907, c. 457, s. 1; 1909, c. 827, s. 1.

Contracts § 121. A voting trust agreement between the majority stockholders of a national bank to prevent the control of a majority of the stock from passing by purchase to a stockholder seemingly *persona non grata* is void as against public policy.—*Bridgers v. First National Bank*, 152 N. C. 293, 67 S. E. 770.

Contracts § 121. Any agreement that separates the beneficial ownership of corporate stock from the legal title is contrary to public policy and void, and restrictions on the right to vote stock are not favored by courts.—*Sheppard v. Rockingham Power Company*, 150 N. C. 776, 64 S. E. 894.

Corporations § 198. A pooling agreement between the owners of a majority of the stock of a corporation to last for ten years, the directors elected to be divided between the members of the pool, was contrary to public policy and was void.—*Bridgers v. Staton*, 150 N. C. 216, 63 S. E. 892.

Corporations § 198. Assignments of corporate stock for a period of years

with authority to vote, reserving the right to the assignors to draw all dividends thereon during such period and the possession of the stock, operated as a proxy only, and were invalid after three years.—*Ibid.*

Corporations § 200. The right of a stockholder to vote cumulatively cannot be exercised on a single proposition, such as the question of adjournment.—*Ibid.*

Corporations § 197. Stockholders not represented at an original meeting were nevertheless entitled to vote at an adjourned meeting.—*Ibid.*

106. Stock held by fiduciary, pledgor, life tenant, or corporation. Every person holding stock as executor, administrator, guardian or trustee, or in any other representative or fiduciary capacity, may represent it at all meetings of the corporation, and may vote it as a stockholder, with the same effect as if the absolute owner thereof, unless the instrument creating the trust provides to the contrary. Every person who has pledged his stock as collateral security may represent it at all such meetings, and may vote it as a stockholder, unless in the transfer to the pledgee on the books of the corporation he has expressly empowered the pledgee to vote it, in which case only the pledgee or his proxy may represent and vote said stock. Where stock is owned by, or has been transferred on its record books to, one for life and remainder over, the life tenant at all meetings of the corporation may represent and vote the stock in person or by proxy, in the same manner and with the same effect as if he were the absolute owner thereof. Shares of stock of a corporation belonging to the corporation cannot be voted directly or indirectly.

C. S., s. 1174; Rev., ss. 1185, 1186, 1187; 1901, c. 2, ss. 42, 43; 1901, c. 474, ss. 1, 2.

Corporations § 197. Where stock is bequeathed in trust to pay the income to one for life, and is to be held and controlled by the trustees with remainder to others, Revisal 1905, section 1185, providing that a person holding fiduciary stock as trustee may vote it, and not section 1186, providing that, where stock is owned by one for life with remainder over, the life tenant may vote it, is controlling.—*Haywood v. Wright*, 152 N. C. 421, 67 S. E. 982.

Section referred to in *Bridgers v. Staton*, 150 N. C. 216, 63 S. E. 892, and *Bridgers v. First National Bank*, 152 N. C. 293, 67 S. E. 770.

107. Election of directors. All elections for directors shall be by ballot, unless otherwise provided in the charter, or by-laws, and a majority of the issued and outstanding stock must be present in person or by proxy; the polls must remain open one hour, unless all the stockholders are present in person or by proxy and have sooner voted, or unless all the stockholders waive this provision in writing; the persons receiving the greatest number of votes shall be the directors.

C. S., s. 1175; Rev., s. 1182; 1901, c. 2, s. 39.

Corporations § 283. The requirement that a majority of all the stock issued and outstanding be present in person or by proxy as a condition to the election of directors of the corporation, remaining stockholders, after the breaking of a quorum, who controlled less than the majority of the stock issued and outstanding, could not hold a valid election of directors, though the adjournment, upon which occurred the departure of stockholders by which the quorum was broken, was illegally voted.—*Bridgers v. Staton*, 150 N. C. 216, 63 S. E. 892.

108. Failure to hold election. If the election for directors of a corporation is not held on the day designated by the charter or by-laws, the directors shall cause the election to be held as soon thereafter as is convenient. No failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation; and if the directors fail or refuse for thirty days after receiving a written request for such election from those owning one-tenth of the outstanding stock, to call a meeting for the election, the judge of the district, or the judge presiding in the courts of the district, in which the principal office of the corporation is located, may, upon the application of any stockholder, and on notice to the directors, order an election or make such other order as justice requires. The proceedings governing the issuance and hearing of injunctions shall, as far as applicable, govern such hearing.

C. S., s. 1176; Rev., s. 1188; 1901, c. 2, s. 46.

Corporations § 283. Where no directors had been elected at the corporation's regular meeting and the old directors fail or refuse for thirty days to call a meeting for that purpose after receipt of a written request therefor from the owners of one-tenth of the outstanding stock, the court upon application of any stockholder and on notice to the directors may order an election, or make any other order that justice may require.—*Bridgers v. Staton*, 150 N. C., 216, 63 S. E. 892.

109. Jurisdiction of superior court over elections. The superior court judge, upon application of any person who may complain of any election, or any proceeding, act on matter pertaining to the same, ten days notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application, shall proceed forthwith, at chambers, in any county in the district in which the principal office of the corporation is situated, to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election complained of, or order a new election, or make any order and give any relief in the premises as right and justice require. The proceedings shall, as far as applicable, be the same as in injunctions.

C. S., s. 1177; Rev., s. 1189; 1901, c. 2, s. 47.

See *Bridgers v. Staton*, 150 N. C. 216, 63 S. E. 892.

110. When dividend declared. The directors of every corporation created under this chapter shall, in January of each year, unless some specific time for that purpose is fixed in its charter, or by-laws, and in that case at the time so fixed, after reserving, over and above its capital stock paid in, as a working capital for the corporation, whatever sum has been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount reserved, and pay it to the stockholders on demand. The corporation may, in its certificate of incorporation or by-laws, give the directors power to fix the amount to be reserved as a working capital.

C. S., s. 1178; Rev., s. 1191; 1901, c. 2, s. 52.

Corporations § 155. Where the word "dividend" is used without qualification and without explanation, it signifies dividends payable in money.—*Lancaster Trust Company v. Mason*, 152 N. C. 660, 68 S. E. 235.

Corporations § 157. The sale of stock with reservation of dividends of certain dates reserves only cash dividends and a stock dividend would not be included.—*Ibid*.

111. Dividends from profits only; directors' liability for impairing capital. No corporation may declare and pay dividends except from the surplus or net profits arising from its business, or when its debts, whether due or not, exceed two-thirds of its assets, nor may it reduce, divide, withdraw, or in any way pay to any stockholder any part of its capital stock except according to this chapter. In case of a violation of any provision of this section, the directors under whose administration the same occurs are jointly and severally liable, at any time within six years after paying such dividend, to the corporation and its creditors, in the event of its dissolution or insolvency, to the full amount of the dividend paid, or capital stock reduced, divided, withdrawn, or paid out, with interest on the same from the time such liability accrued. Any director who was absent when the violation occurred, or who dissented from the act or resolution by which it was effected, may exonerate himself from such liability by causing his dissent to be entered at large on the minutes of the directors at the time the action was taken or immediately after he has had notice of it.

C. S., s. 1179; Rev., s. 1192; Code, s. 681; 1901, c. 2, ss. 33, 52.

Bankruptcy § 145. Corporate officers, who paid dividends when the debts exceeded two-thirds of the assets of the corporation, are liable to the trustee in bankruptcy for debts.—*Claypoole v. McIntosh*, 182 N. C. 109, 108 S. E. 433.

Corporations § 67. Where the capital stock of a bank has been impaired, although called a division of profits, a division of funds among stockholders, is a dividend of capital. *Atty. Gen. v. Bank*, 21 N. C. 545.

Corporations § 67. A corporation cannot settle with its members by the application of assets to the retirement or redemption of the stock of the shareholders until it had first settled and discharged all its liabilities, and any agreement among the shareholders looking to such arrangement will be void as to creditors.—*Heggie v. Peoples Building & Loan Ass'n*, 107 N. C. 581, 12 S. E. 275.

Corporations § 623. A corporation purchasing from the officers and stockholders of another corporation almost its entire assets, without provision for the creditors, is, with such officers and directors, jointly and severally liable to the receiver of defunct selling corporation for the amount necessary to pay the claims existing against it, interest and costs.—*McIver v. Young Hardware Co.*, 144 N. C., 478, 57 S. E. 169.

Corporations § 67. The requirement of notice of the reduction of capital stock necessary to afford stockholders protection against creditors, a reduction without notice, if otherwise valid, is enforceable by the corporation against its members.—*Misenheimer v. Alexander*, 162 N. C. 227, 78 S. E. 161.

ART. 7. FOREIGN CORPORATIONS.

112. Powers existing independently of permission to do business. A corporation created by another state of the United States, or by any foreign state, kingdom, or government may acquire by devise or otherwise, and may hold, mortgage, lease, and convey real estate in this state for the purpose of prosecuting its business or objects, or such real estate as it may acquire by way of mortgage or otherwise in the payment of debts due to it, but is not eligible or entitled to qualify in this state as executor, administrator, guardian, or trustee under the will of any person domiciled in this state at the time of his death. The right to acquire, hold and convey real estate exists only where at the time of the acquisition, the foreign state, government, or kingdom under whose laws the corporation was created is not at war with the United States.

C. S., s. 1180; Rev., s. 1193; 1901, c. 2, s. 93; 1915, c. 196, s. 1.

Corporations § 661. A foreign corporation, incorporated to do business in North Carolina, and domesticated in that state by compliance with its laws, may sue therein, though it has no power to do business in the state of its incorporation.—*Troy & North Carolina Gold Mining Company v. Snow Lumber Company*, 173 N. C. 593, 92 S. E. 494; *Barcello v. Hapgood*, 118 N. C. 712, 24 S. E. 124.

Corporations § 635. Articles of incorporation of company organized under the general incorporation laws of New York to conduct mining business in North Carolina were not void on their face because New York gave company no authority to do business in New York.—*Ibid.*

Corporations § 631. In the absence of any prohibitive statute, a corpo-

ration having its domicile of origin or creation in one state has, as a matter of comity, the right to carry on its corporate business and perform its corporate functions in any other state.—*Blackwell's Durham Tobacco Company v. American Tobacco Company*, 145 N. C. 367, 59 S. E. 123.

Corporations § 654. So long as foreign corporations are permitted to be within the state either by compliance with the laws or as a matter of comity, they are entitled to have the laws of the land administered so that they have equal protection and equal justice done them.—*Ibid*.

See *Fisher v. Traders' Mutual Life Insurance Co.*, 136 N. C. 217, 48 S. E. 667; *Shields v. Union Central Life Ins. Co.*, 119 N. C. 380, 25 S. E. 951.

113. Requisites for permission to do business. Every foreign corporation before being permitted to do business in this state, insurance companies excepted, shall file in the office of the secretary of state a copy of its charter or articles of agreement, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized, the amount actually issued, the principal office in this state, the name of the agent in charge of such office, the character of the business which it transacts, and the names and postoffice addresses of its officers and directors. And such corporation shall pay to the secretary of state, for the use of the state, twenty cents for every one thousand dollars of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than twenty-five dollars nor more than two hundred and fifty dollars; and also a filing fee of five dollars. Such corporation may withdraw from the state upon filing in the office of the secretary of state a statement signed by its president and secretary and attested by its corporate seal, setting forth the fact that such corporation desires to withdraw, and upon payment to the secretary of state of a fee of five dollars. Every corporation failing to comply with the provisions of this section shall forfeit to the state five hundred dollars, to be recovered, with costs, in an action to be prosecuted by the attorney-general, who shall prosecute such actions whenever it appears that this section has been violated. This section does not apply to railroad, banking, express or telegraph companies which, prior to March 9, 1915, had been licensed to do business in this state, or were engaged in business in this state, having a regularly appointed agent upon whom service of process could be made, located in this state.

C. S., s. 1181; Rev., s. 1194; 1901, c. 2, s. 57; 1903, c. 76; 1915, c. 263.

Corporations § 657. A foreign corporation's contract of sale is not invalidated, nor its right to recover the price lost, by its failure to file papers, as required by section above, before being permitted to do business in the state; the statute merely imposing a penalty for such failure.—*G. Ober & Sons v. Katzenstein*, 160 N. C. 439, 76 S. E. 476.

Corporations § 636. The legislature has the power to prescribe the terms on which foreign corporations may come into the state, and may pass statutes for the protection of its own citizens doing business with them, as against the objection that such statutes discriminate against nonresidents.—*Williams v. Mutual Reserve Fund Life Ass'n*, 145 N. C. 128, 58 S. E. 802.

Corporations § 636. There is nothing in either the federal or state constitution which prohibits the state, in the exercise of its police power, in order to prevent fraud and imposition, from requiring a license from foreign corporations for doing business in the state.—*State v. Agey*, 171 N. C. 831, 88 S. E. 726.

Corporations § 636. The State can impose burdens on foreign corporation as a condition of its conducting business within the state, subject to restriction that tax laws must not interfere with foreign or interstate commerce, or unjustly discriminate between different foreign corporations of the same class.—*Pittsburgh Life & Trust Co. v. Young*, 172 N. C. 470, 90 S. E. 568.

Corporations § 640. Corporation can exercise in jurisdiction other than that in which it is incorporated only such powers as are set forth in its articles of incorporation.—*Troy & North Carolina Gold Mining Co. v. Snow Lumber Co.*, 173 N. C. 593, 92 S. E. 494.

ART. 8. DISSOLUTION.

114. Voluntary, generally. When in the judgment of the board of directors, it is deemed advisable and for the benefit of a corporation that it be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board, at a meeting called for that purpose, of which meeting every director shall have received three days notice, shall cause notice of adoption of such resolution to be mailed to each stockholder residing in the United States, to his last known postoffice address, and also, beginning within said ten days, cause a like notice to be published in a newspaper published in the county wherein the corporation has its principal office, at least once a week for four successive weeks, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution. The stockholders' meeting thus called may, on the day appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time for not less than eight days at one time, of which adjourned meeting notice by advertisement in said newspaper shall be given. If at such meeting two-thirds in interest of all the stockholders consent in writing that a dissolution take place, their consent, together with the list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in the office of the secretary of state, who, upon being satisfied by due proof

that the requirements aforesaid have been complied with, shall issue a certificate that the consent has been filed, and the board of directors shall cause this certificate to be recorded in the office of the clerk of the superior court of the county in which the principal office of the corporation is located, and published once a week for four successive weeks in a newspaper published in said county. Upon the filing in the office of the secretary of state of an affidavit of the manager or publisher of such newspaper that the certificate has been so published, the corporation is dissolved, and the board shall proceed to settle up and adjust its business and affairs. Whenever all the stockholders consent in writing to a dissolution, no meeting or notice thereof is necessary, but on filing the consent in the office of the secretary of state he shall forthwith issue a certificate of dissolution, which shall be published as above provided, and recorded in the office of the clerk of the superior court of the county in which the principal office of the corporation is located.

C. S., s. 1182; Rev., s. 1195; 1901, c. 2, s. 34.

Corporations § 604. Bankruptcy of a corporation does not, of itself, work a dissolution.—*Stagg v. Spray Water & Land Co.*, 171 N. C. 583, 89 S. E. 47. See this case for general discussion of dissolution of corporations.

Corporations § 620. Where the directors of a corporation are proceeding to dissolve the corporation, under this section, providing that a corporation may be dissolved by its directors whenever they shall deem it advisable and for the benefit of the corporation, by passing a resolution by a majority of the board, followed by notice to the stockholders and approval of the resolution by two-thirds of such stockholders in interest, the courts will not restrain such proceeding at the instance of a stockholder, where it does not appear that the directors are acting in bad faith, or are violating their duties as trustees in respect to the corporate management, though the corporation is not insolvent, and the sole ground urged by its directors for the dissolution is that it is inexpedient to continue the corporate business.—*White v. Kincaid*, 149 N. C. 415, 63 S. E. 109.

Corporations § 605. Upon the dissolution or extinction of a corporation for any cause, real property conveyed to it in fee does not revert to the original grantors or their heirs, and its personal property does not escheat to the state; and this is so whether or not the duration of the corporation was limited by its charter or general statute.—*Wilson v. Leary*, 120 N. C. 90, 26 S. E. 630, overruling *Fox v. Horah*, 36 N. C. 358.

Corporations § 629. Neither officers nor members of corporations can evade their plain duty to those with whom contracts are made, by dissolving the organization and leaving creditors unprovided for.—*Perry v. Farmers' Mutual Fire Ins. Co.*, 139 N. C. 374, 51 S. E. 1025.

Corporations § 629. Where nothing shows a corporation has been dissolved, or its corporate affairs settled in any way recognized by law, stockholders continue to be liable for its debts, and could only be entitled, by virtue of their stock, to share in the surplus after all creditors had been paid.—*Heggie v. People's Building & Loan Ass'n*, 107 N. C. 581, 12 S. E. 275.

115. Liability of Stockholders. The stockholders of a corporation chartered under the laws of this state are individually liable for all taxes, costs and fees for the dissolution of the corporation, and the attorney-general is authorized to enforce the provisions of this section by suit before a justice of the peace or in the superior court in the county where such corporation had its principal place of business, whenever it appears upon report from the secretary of state that the corporation has ceased to transact business and fails to pay the taxes due the state or to file annual statements or to dissolve itself as provided by law. If a nonresident stockholder of the corporation refuses to sign the certificate of dissolution, the resident stockholders shall make affidavit to that effect, and the written assent of such resident stockholders, accompanied by such affidavit, is sufficient to dissolve the corporation. If no stockholder of such corporation is found within the state the secretary of state has authority to declare the charter of the corporation forfeited, and shall publish annually in his corporation report a list of the corporations whose charters have been so forfeited.

C. S., s. 1183; 1909, c. 730, s. 1.

116. Voluntary, before payment of stock. The incorporators named in a certificate of incorporation, before the payment of any part of the capital stock, and before beginning the business for which the corporation was created, may surrender all their corporate rights and franchises, by filing in the office of the secretary of state a certificate, verified by oath, that no part of the capital stock has been paid and such business has not been begun, and surrendering all rights and franchises. Thereupon the corporation is dissolved.

C. S., s. 1184; Rev., s. 1177; 1901, c. 2, s. 35.

117. Involuntary, at instance of private persons. Corporations may be dissolved by civil action, instituted by the corporation, a stockholder, or creditor, or by authority of the attorney-general in the name of the state, in the following cases:

1. For any abuse of its powers to the injury of the public or of its stockholders, creditors, or debtors.

2. For nonuser of its powers for two or more consecutive years.

3. When it is insolvent, or suspends its ordinary business for want of funds, or is in imminent danger of insolvency, or has forfeited its corporate rights.

4. Upon any conviction of the company of a persistent criminal offense.

C. S., s. 1185; Rev., s. 1196; Code, s. 694; 1901, c. 2, s. 73.

Corporations § 614. The court having jurisdiction to dissolve corporations, may dispose of all questions arising.—*Lasley v. Walnut Cove Mercantile Co.*, 179 N. C. 575, 103 S. E. 213.

Corporations § 614. Sale of property of corporation by commissioner upon dissolution properly stayed until creditor and trustee under deed of trust could be made parties.—*Ibid.*

Corporations § 614. In stockholder's action for dissolution of corporation and appointment of a receiver, the court will respect all valid and existing liens on property of corporation, but will take charge of the property affected by such liens, whether by deeds of trust or other liens, and sell the property through its own appointees in disregard of the minor requirements of the deeds or other instruments, etc., where such course works no substantial impairment of the value of the security and is for the best interest of the owners and others having claim upon the assets.—*Lasley v. Scales*, 179 N. C. 578, 103 S. E. 214.

Corporations § 604. Bankruptcy of a corporation does not, of itself, work a dissolution.—*Stagg v. Spray Water Power & Land Co.*, 171 N. C. 583, 89 S. E. 47.

Corporations § 553. Where a corporation had done no business for about 25 years, and there were no officers in existence, and no organization was maintained, a stockholder was entitled to maintain an action for the appointment of a receiver, although such corporation had not been dissolved in accordance with the provisions of statute.—*Greenleaf v. Land & Lumber Company*, 146 N. C. 505, 60 S. E. 424.

Corporations § 597. A domestic corporation's failure to maintain a "principal office" in the state and the withdrawal of all agencies from the state, is an abuse and misuse of its corporate franchise.—*Simmons v. Norfolk & B. Steamboat Co.*, 113 N. C. 147, 18 S. E. 117.

See *Asheville Division, Sons of Temperance v. Aston*, 92 N. C. 579.

Corporations § 63. A suit by minority stockholders to dissolve a corporation and appoint a receiver does not entitle creditors to relief in the bankruptcy court until the corporation became insolvent and committed an act of bankruptcy.—*Bank of Andrews v. Gudger*, 212 Federal 49, 128 C. C. A. 505.

118. Involuntary, by stockholders. When stockholders owning one-fifth or more in amount of the paid-up stock of any corporation organized under the laws of and doing business in this state, except corporations organized for religious, charitable, fraternal, and educational purposes, and except banking and public-service corporations, apply in term or vacation to the judge of the superior court holding the courts for the county in which the principal place of business of the corporation is situated, by petition containing a statement that for three years next preceding the filing of the petition, which time shall begin to run from three years after it has begun business, the net earnings of the corporation have

not been sufficient to pay in good faith an annual dividend of four per cent upon the paid stock of the corporation, over and above the salaries and expenses authorized by its by-laws and regulations, or that the corporation has paid no dividend for six years preceding said application; or whenever stockholders owning one-tenth or more in amount of the paid-up common stock of any such corporation apply to the judge of the superior court as aforesaid by petition containing a statement that the corporation has paid no dividend on the common stock for ten years preceding said application, and that they desire a dissolution of the corporation, the judge shall make an order requiring the officers of the corporation to file in court, within a reasonable time, inventories showing all the real and personal estate of the corporation, a true account of its capital stock, the names of the stockholders, their residences, the number of shares belonging to each, the amount paid in upon said shares and the amount still due thereon, and a statement of all the encumbrances on the property of the corporation and all its contracts which have not been fully satisfied and canceled, specifying the place and residence of each creditor, the sum owing to each, the nature of the debt or demand, and the consideration therefor, and the books and papers of the corporation. Upon the filing of the inventories, account and statements, the court shall enter an order requiring all persons interested in the corporation to appear before a referee to be appointed by the court, at a time and place named in the order, service of which may be made by publication for such time as may be deemed proper by the court, and show cause why the corporation should not be dissolved. If it appears to the court that the statements contained in the petition are true, the court may adjudge a dissolution of the corporation and shall appoint one or more receivers, who shall have all powers of receivers conferred by this chapter for the winding up of the affairs and distribution of the assets of the corporation. If it appears to the court that the corporation is insolvent or in imminent danger of insolvency, the court may appoint a temporary receiver of the corporation pending dissolution. No suit shall be brought for the dissolution of a corporation under the provisions of this section until each and all of the petitioners have owned their stock for the term of two years prior to the institution of the action; nor shall any such suit be brought for the period of three years after a final judgment upon a prior petition as herein provided.

C. S., s. 1186; 1913, c. 147; 1915, c. 137, s. 1.

Corporations § 592. A director, officer and stockholder of a corporation,

who has for a long time acquiesced in its policy of devoting earnings to enlarging the business, instead of payment of dividends, is estopped to ask the corporation's dissolution because it has not declared a dividend within six years preceding, as provided by section.—*Winstead v. Hearne Bros. & Co.*, 173 N. C. 606, 92 S. E. 613. (Attention is called to the inconsistency of the period that must run without dividends, six years, as stated by Laws of 1913, c. 147, and the period of ten years contained in the amendment of Chapter 137, Laws of 1915. It is held that a ten year complete suspension of dividends on the common stock is grounds for appointment of receiver.)—*Ibid.*

Corporation § 572. The court has power to enter a decree for a sale of the franchise with the corporate property, transferring the same to the purchasers and conferring upon them the right to reorganize and carry on the business as a new corporation.—*Wood v. Staton*, 174 N. C. 245, 93 S. E. 794.

119. Involuntary, by attorney-general. An action may be brought by the attorney-general in the name of the state against a corporation for the purpose of annulling its charter upon the ground that it was procured upon a fraudulent suggestion, or concealment of a material fact, by the persons incorporated or by some of them, or with their knowledge or consent; or for the purpose of annulling the existence of a corporation, other than municipal, when such corporation—

1. Offends against the act creating, altering, or renewing it.
2. Violates any law by which it has forfeited its charter by abuse of its power.
3. Has forfeited its privileges or franchises by failure to exercise its power.
4. Has done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises.
5. Has exercised a franchise or privilege not conferred upon it by law.
6. Has failed to use its powers for two or more consecutive years.
7. Has become insolvent as manifested by the return of an execution unsatisfied upon a judgment against the corporation docketed in the superior court of the county where it has its principal place of business.

It is the duty of the attorney-general, whenever he has reason to believe that any of these acts or omissions can be established by proof, to bring an action in every case of public interest, and also in every other case in which satisfactory security is given to

indemnify the state against the costs and expenses to be incurred thereby.

C. S., s. 1187; Rev., s. 1198; Code, ss. 604, 605; 1889, c. 533.

Municipal Corporations § 18. Under the authority of the attorney-general to sue to annul the charter of a corporation on the ground it was procured on a fraudulent suggestion or concealment of a material fact, he may sue to annul the charter of a rural community obtained on the false suggestion that it consisted of one entire school district, when in fact it was composed of parts of three.—*Manning v. Rama Rural Community*, 109 S. E. 576.

Corporations § 599. The attorney-general is prohibited from bringing an action on his own motion for the vacation of a corporation's articles, etc., for fraud.—*Attorney General v. Holly Shelter R. Co.*, 134 N. C. 481, 46 S. E. 959.

Corporations § 599. A corporation cannot endure longer than the time prescribed in its charter, and no judicial proceedings are necessary to declare a forfeiture for such a cause, but for any other cause of forfeiture a direct proceeding must be instituted by the sovereign to enforce the forfeiture, and it cannot be taken advantage of in any collateral proceedings.—*Asheville Division, Sons of Temperance, v. Aston*, 92 N. C. 579.

Corporations § 387. If a New York mining corporation, doing business in North Carolina, had violated its articles of incorporation, the matter could not be set up by defendants in the company's action in North Carolina to recover land, but it would be necessary that quo warranto be instituted by leave of the Attorney General.—*Troy & North Carolina Mining Co. v. Snow Lumber Co.*, 173 N. C. 593, 92 S. E. 494.

See *Simmons v. Steamboat Company*, 113 N. C. 147, 18 S. E. 117; *Attorney General v. Railroad*, 28 N. C. 456.

120. Forfeiture or dissolution for failure to organize or act. When a charter has been granted creating a corporation, and the incorporators for two years neglect to organize and carry into effect the intent of the charter, or when organized, if they for two consecutive years cease to act, then this disuse of their corporate privileges and powers is a forfeiture of the charter. If, after thirty days notice by the secretary of state, the corporation fails to surrender its corporate rights or to dissolve, in the manner provided in this chapter, the secretary of state shall report it to the attorney-general, who shall institute an appropriate action for its dissolution.

C. S., s. 1188; Rev., s. 1246; Code, s. 688; 1901, c. 2, s. 106.

Corporations § 596. Failure of corporation to organize within two years after it is chartered cannot be set up against the validity of a lien by a bank on shares of a stockholder given by the charter, but can only be raised by the state in a direct proceeding.—*Boyd v. Redd*, 120 N. C. 335, 27 S. E. 35.

121. Forfeiture for nonuser by hydro-electric companies. All waterpower, hydro-electric power, and water companies or cor-

porations organized in this state shall be required to begin active work in making their proposed development within two years after their organization and diligently to prosecute their work on the same until it has been completed; and a failure to begin the work or development within the time, and to diligently prosecute work on the same until its completion, as herein provided, shall be legal grounds for declaring their charter rights, privileges and franchises forfeited, by the state, acting through its attorney-general, upon the recommendation of the corporation commission of this state: Provided, this section shall not apply to any company which is supplying the public and is meeting the demands of the public for its services.

C. S., s. 1189; 1913, c. 133, s. 2.

122. Involuntary, by bankruptcy. When a corporation chartered under the laws of this state is adjudged bankrupt under the laws of the United States, the charter of the corporation is forfeited without further action, unless the stockholders determine by appropriate resolutions to continue the corporate existence of the corporation after the adjudication in bankruptcy, and furnish the secretary of state with a duly certified copy of the resolutions, all within six months after the adjudication. The stockholders of a bankrupt corporation whose existence is continued by the foregoing procedure must pay all privilege taxes which have accrued against the corporation since the adjudication, together with a fee of one dollar allowed the secretary of state for recording and filing the certificate provided for in this section.

C. S., s. 1190; 1915, c. 134, ss. 2, 3.

Corporations § 604. Bankruptcy of a corporation does not of itself work a dissolution.—*Stagg v. Spray Water Power & Land Company*, 171 N. C. 583, 89 S. E. 47.

123. When franchises forfeited by neglect, etc., corporation dissolved; costs. If it is adjudged that a corporation against which an action has been brought has forfeited by neglect, abuse, or surrender, its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such rights, privileges and franchises, and that it be dissolved. If judgment is rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs to be collected by execution against the persons making the claim, or by attachment or process against the directors or other officers of the corporation.

C. S., s. 1191; Rev., ss. 1209, 1210; Code, ss. 617, 618.

124. Service of summons in action for dissolution. In an action for the dissolution of a corporation, or for the appointment of a receiver thereof, the summons must be served on the corporation by service on an officer or agent upon whom other process can be served, and shall be served on the stockholders, creditors, dealers, and others interested in the affairs of the company by publishing a copy at least weekly for two successive weeks in some newspaper printed in the county in which the corporation has its principal place of business, or if there is no such newspaper published, by posting a copy of the summons at the door of the courthouse of such county, and publishing a copy for the time and in the manner aforesaid in a newspaper published nearest the county seat of the county in which the corporation has its principal place of business or in a newspaper published in the city of Raleigh. This publication is sufficient service on all the stockholders, creditors of, or dealers with, the corporation, and upon the corporation, if no officer can after due diligence be found in the state and it has no process agent in the state; and all such stockholders, creditors or dealers or other parties interested may intervene in said proceedings and become parties thereto for themselves, or for others in like interest, under such rules as the court for the purpose of justice prescribes.

C. S., s. 1192; Rev., s. 1199; Code, s. 695; 1911, c. 173, s. 1.

125. Corporate existence continued three years. All corporations whose charters expire by their own limitation, or are annulled by forfeiture or otherwise, shall continue to be bodies corporate for three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending actions by or against them, and of enabling them gradually to settle and close their concerns, to dispose of their property, and to divide their assets; but not for the purpose of continuing the business for which the corporation was established. In any pending action the court, in its discretion, may extend the time for winding up the affairs of such corporation.

C. S., s. 1193; Rev., s. 1200; Code, s. 667; 1901, c. 2, s. 58.

Corporations § 630. The statutory remedy is exclusive of all others, and must be pursued within three years. A failure to proceed within that period will be a complete defense, not only to the corporation, but to the stockholders who by its charter are made individually responsible in the event of its insolvency.—*Von Glahn v. De Rosset*, 81 N. C. 467.

Corporations § 630. Judgments against a corporation rendered upon process issued after it ceased to exist, are of no validity.—*Dobson v. Simonton*, 86 N. C. 492.

Corporations § 577. Section above does not apply where an old corpora-

tion is, by a transfer of all its property rights and privileges, merged into a new company, with the same stockholders and directors as the old, which assume all liabilities and contracts of the old corporation.—*Friedenwald & Co. v. Asheville Tobacco Works and Cigarette Co.*, 117 N. C. 544, 23 S. E. 490.

Section applied—*Heggie v. Peoples Building & Loan Ass'n*, 107 N. C. 581, 12 S. E. 275.

Corporations § 619. A valid conveyance of property belonging to a corporation can be made in the corporation's name by the order of its trustees after its voluntary dissolution.—*Lowdermilk v. Butler*, 182 N. C. 502, 109 S. E. 571.

126. Directors to be trustees; powers and duties. On the dissolution in any manner of a corporation, unless otherwise directed by an order of the court, the directors are trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property, and, after paying its debts, divide any surplus money and other property among the stockholders. The trustees have power to meet and act under the by-laws of the corporation, and, under regulations to be made by a majority, to prescribe the terms and conditions of the sale of such property, and they may sell all or any part for cash, or partly on credit, or take mortgages or bonds for part of the purchase price for all or any part of the property. They have power to sue for and recover the said debts and property in the name of the corporation, and are suable in the same name for the debts owing by it, and are jointly and severally responsible for such debts only to the amount of property of the corporations which comes into their possession as trustees.

C. S., s. 1194; Rev., ss. 1201, 1202; Code, s. 687; 1901, c. 2, ss. 59, 60.

Corporations § 550. It is the duty of the directors to preserve the assets of the corporation and administer them for the benefit of the creditors.—*McIver v. Young Hardware Co.*, 144 N. C. 478, 57 S. E. 169.

Corporations § 542. All the directors and stockholders of a corporation may not sell practically the entire assets of the corporation for their own benefit and advantage, upon a consideration moving to themselves alone, to the prejudice of the rights of its creditors.—*Ibid.*

Corporations § 619. A valid conveyance of property belonging to a corporation can be made in the corporation's name by the order of its trustees after its voluntary dissolution.—*Lowdermilk v. Butler*, 182 N. C. 502, 109 S. E. 571.

127. Jurisdiction of superior court. When a corporation is dissolved, in any manner whatsoever, the superior court, on application of a creditor or stockholder, may either continue the directors as trustees or appoint one or more persons receivers of the corporation. The court has jurisdiction of the application, and of all questions arising in the proceedings thereon, and may make,

at any place in the district, any orders, injunctions, or decrees therein as justice and equity require. The powers of such trustees or receivers are as elsewhere given in this chapter, and may be continued as long as the court thinks necessary.

C. S., s. 1195; Rev., ss. 1203, 1204; Code, ss. 619, 668, 669; 1901, c. 2, ss. 61, 62.

Corporations § 625. Proceedings to recover the assets and capital stock of a dissolved corporation which had been distributed among the stockholders, and against the officers and directors, were within the equitable jurisdiction of the superior court; the statute declaring the liability of directors and stockholders to creditors being simply a cumulative legal remedy, and not restricting the rights of the creditors by shortening the time within which those rights could be enforced.—*Chatham v. Mecklenburg Realty Co.*, 180 N. C. 500, 105 S. E. 329.

Corporations § 625. The entire matter of winding up the business of a corporation after dissolution may be taken charge of by the court, and must be at the instance of either the creditors or stockholders, or any one of them.—*White v. Kincaid*, 149 N. C. 415, 63 S. E. 109.

Corporations § 553. An insolvent corporation, with its property or plant located in this state, is subject to the appointment by our court of a receiver to take charge of its assets here and administer them as a trust fund for its creditors, though incorporated under the laws of another state.—*Summit Silk Co. v. Kinston Spinning Co.*, 154 N. C. 422, 70 S. E. 820; *Holshouser v. Gold Hill Copper Co.*, 138 N. C. 251, 50 S. E. 650.

Corporations § 553. If, during the existence of a corporation, its officers fraudulently or unlawfully disposed of any of its property, creditors are entitled to have a receiver appointed to sue for and recover it.—*Latta v. Catawba Electric & Power Co.*, 146 N. C. 285, 59 S. E. 1028.

Corporations § 553. In stockholder's suit to justify the appointment of a receiver, where plaintiffs proved majority stockholders' mismanagement would bring about insolvency, it was not necessary that they show absolute insolvency of corporation.—*Mitchell v. Aulander Realty Co.*, 169 N. C. 516, 86 S. E. 358.

Corporations § 561. The receiver of an insolvent corporation may, either in his own name or in that of the corporation, sue to collect the assets of the corporation, and have adjudicated in such suit all legal and equitable matters touching the rights of the corporation, its creditors and debtors.—*Smathers v. Western Carolina Bank*, 135 N. C. 410, 47 S. E. 893.

Corporations § 561. The receiver may sue either in his own name or in that of the corporation. In whatever name he may elect to bring the action, it is essentially a suit by the corporation, prosecuted by order of the court, for the collection of assets. Whatever may have been the law in respect to the right of the receiver to prosecute actions for the recovery of the assets of the corporation prior to the change in our judicial system, blending legal and equitable jurisdiction and remedies and power into one tribunal and providing for one form of action, it is well settled that a receiver can now sue either way. A receiver is only the officer of the court, its custodian, and the title to the assets remains in the original owner. He is the arm of the court to collect and administer the assets, and acquires no beneficial interest in them. It is clear he may use the name of the insolvent corporation, or his own, or both, at his election.—*Clark Millinery Co. v. National Union Fire Ins. Co.*, 160 N. C. 130, 75 S. E. 944.

128. Injunction; notice and undertaking. An injunction to suspend the general and ordinary business of a corporation or to appoint a receiver shall not be granted without due notice of the application therefor to the corporation, except where the state is a party to the proceedings, unless the plaintiff gives a written undertaking, executed by two sufficient sureties to be approved by the judge, to the effect that the plaintiff will pay all damages, not exceeding the sum mentioned in the undertaking, which the corporation may sustain by reason of the injunction, or the appointment of the receiver, if the court finally decides that the plaintiff was not entitled thereto. The damages may be ascertained by a reference or otherwise, as the court directs.

C. S., s. 1196; Rev., s. 1205; Code, s. 343; C. C. P., s. 194.

Corporations § 549. Where there is a cause for complaint by stockholders against others, they should first resort to the remedy prescribed in their charter; and failing in this, they will have a right to proceed against the delinquents, and, in proper cases, injunction will be granted to protect the rights of parties.—*Moore v. Silver Valley Mining Co.*, 104 N. C. 534, 10 S. E. 679. And facts sufficient to sustain cause of action must be alleged before injunction will lie.—*Ibid.*

Injunction § 12. Where the directors of a corporation, having power to sell, have consummated a sale of corporate stock, it is too late for interference by injunction; a stockholder desiring to enjoin the transfer pending litigation having a remedy by motion in the cause for good cause shown.—*Huet v. Piedmont Springs Lumber Co.*, 138 N. C. 443, 50 S. E. 846.

129. Wages for two months lien on assets. In case of the insolvency of a corporation all persons doing labor or service of whatever character in its regular employment have a lien upon the assets thereof for the amount of wages due to them for all labor, work, and services rendered within two months next preceding the date when proceedings in insolvency were actually instituted and begun against the corporation, which lien is prior to all other liens that can be acquired against such assets.

C. S., s. 1197; Rev., s. 1206; 1901, c. 2, s. 87.

Corporations § 480. One who takes a mortgage upon corporation property for money loaned does so with the knowledge that his lien may be displaced in favor of laborers' liens or judgments for tort and the expenses of receivership or of other court proceedings to wind up the corporation in cases of insolvency.—*Humphrey Bros. v. Buell-Crocker Lumber Co.*, 174 N. C. 514, 93 S. E. 971.

Insolvency § 119. Section does not destroy the lien of a laborer for services performed after the institution of insolvency proceedings, but merely limits the lien to all labor performed after 60 days before the institution of the proceedings.—*Walker v. Linden Lumber Co.*, 170 N. C. 460, 87 S. E. 331.

Corporations § 566. Statute does not apply to independent contractors whose profits or losses are regulated under their contract.—*Phoenix Iron Co. v. Roanoke Bridge Co.*, 169 N. C. 512, 86 S. E. 184.

Insolvency § 119. Statute does not create a preference in favor of the employees of an insolvent corporation in timber, title to which was held as security by one not in privity with the corporation.—*Roberts v. Bowen Manufacturing Co.*, 169 N. C. 27, 85 S. E. 45.

Corporations § 566.—Officers and owners of a corporation are not entitled to priorities of payment for work and labor done by them over the other creditors, as such officers do not come under the meaning of the word "laborers" and "workmen" used in the statute, and were not so intended.—*Alexander v. Farrow*, 151 N. C. 320, 66 S. E. 209.

See *Riley v. Sears & Co.*, 156 N. C. 267, 72 S. E. 367.

130. Distribution of funds. After payment of all allowances, expenses and costs, and the satisfaction of all general and special liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionately to the amount of their respective debts, and shall be entitled to distribution on debts not due, making in such case a rebate of interest when interest is not accruing on the same. Any surplus funds, after payment of the creditors and costs, expenses and allowances, shall be paid to the preferred stockholders according to their respective shares, and if there still be a surplus, it shall be divided and paid to the general stockholders proportionately, according to their respective shares. Upon the distribution of the assets of an insolvent corporation, judgment of dissolution shall be entered and a certified copy of the judgment filed in the office of the secretary of state, and also in the office of the clerk of the superior court of the county in which the principal office of the corporation is located, and the same shall be recorded in the Corporation Book and in the Record of Incorporations in these offices respectively. Thereupon the corporation is dissolved without being required to comply with section 1182 (herein 114) under this chapter.

C S., s. 1198; Rev., s. 1207; Code, s. 670; 1901, c. 2, ss. 63, 89; 1909, c. 15, s. 1.

Corporations § 565. After the payment of costs and the satisfaction of special and general liens, the creditors of an insolvent corporation shall be paid proportionately to the amount of their respective debts, and the court shall allow costs before distribution of the assets among the creditors, costs and legitimate expenses in a suit to distribute the assets of an insolvent corporation must be paid out of the funds of the corporation, and the balance must be distributed among the creditors according to priority.—*Hickson Lumber Co. v. Gay Lumber Co.*, 150 N. C. 281, 63 S. E. 1048.

Section referred to.—*The Observer Co. v. Little*, 175 N. C. 42, 94 S. E. 526; *Humphrey Bros. v. Buell-Crocker Lumber Co.*, 174 N. C. 514, 93 S. E. 971; *Chatham v. Mecklenburg Realty Co.*, 180 N. C. 500, 105 S. E. 329.

131. Debts not extinguished nor actions abated. In case of the dissolution of a corporation, the debts due to and from it are not

thereby extinguished, nor do actions against a corporation which is dissolved before final judgment abate by reason thereof, but no judgment shall be entered therein without notice to the trustees or receivers of the corporation.

C. S., s. 1199; Rev., ss. 1201, 1208; Code, s. 687; 1901, c. 2, ss. 59, 64.

132. Copy of judgment to be filed with secretary of state; costs. A copy of every judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of state, and a note thereof shall be made by the secretary of state on the charter or certificate of incorporation and in the index thereof, and be published by him in the annual report hereinafter provided for, the cost of which shall be taxed by the clerk of the superior court in the action wherein the corporation is dissolved.

C. S., s. 1200; Rev., s. 1211; 1901, c. 2, s. 65.

ART. 9. EXECUTION.

133. How issued; property subject to execution. If a judgment is rendered against a corporation, the plaintiff may sue out such executions against its property as is provided by law to be issued against the property of natural persons, which executions may be levied as well on the current money as on the goods, chattels, lands and tenements of such corporation.

C. S., s. 1201; Rev., s. 1212; 1901, c. 2, s. 66.

134. Agent must furnish information as to property to officer. Every agent or person having charge or control of any property of the corporation, on request of a public officer having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due, so far as he has knowledge of the same.

C. S., s. 1202; Rev., s. 1213; 1901, c. 2, s. 67.

135. Shares of stock subject to; agent must furnish information. Any share or interest in any bank, insurance company, or other joint stock company, that is or may be incorporated under the authority of this state, or incorporated or established under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution in the same manner as goods and chattels. The clerk, cashier, or other officer of such company who has at the time the custody of the books of the company shall, upon being shown the writ of exe-

cution, give to the officer having it a certificate of the number of shares or amount of the interest held by the defendant in the company; and if he neglects or refuses to do so, or if he willfully gives a false certificate, he shall be liable to the plaintiff for the amount due on the execution, with costs.

C. S., s. 1203; Rev., ss. 1214, 1215; 1901, c. 2, ss. 69, 70.

136. Debts due corporation subject to; duty and liability of agent. If an officer holding an execution is unable to find other property belonging to the corporation liable to execution, he or the judgment creditor may elect to satisfy such execution in whole or in part out of any debts due the corporation; and it is the duty of any agent or person having custody of any evidence of such debt to deliver it to the officer, for the use of the creditor, and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor, shall be a valid assignment thereof; and the creditor may sue for and collect the same in the name of the corporation, subject to such equitable set-offs on the part of the debtor as in other assignments. Every agent or person who neglects or refuses to comply with the provisions of this and the last preceding section is liable to pay to the execution creditor the amount due on the execution, with costs.

C. S., s. 1204; Rev., s. 1216; 1901, c. 2, s. 68.

137. Violations of three preceding sections misdemeanor. If any agent or person having charge or control of any property of a corporation, or any clerk, cashier, or other officer of a corporation, who has at the time the custody of the books of the company, or if any agent or person having custody of any evidence of debt due to a corporation, shall, on request of a public officer having in his hands for service an execution against the said corporation, willfully refuse to give to such officer the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due, or shall willfully refuse to give to such officer a certificate of the number of shares, or amount of interest held by such corporation in any other corporation, or shall willfully refuse to deliver to such officer any evidence of indebtedness due or to become due to such corporation, he shall be guilty of a misdemeanor.

C. S., s. 1205; Rev., s. 3690; 1901, c. 2, ss 67, 68, 70.

138. Proceedings when custodian of corporate books is a non-resident. When the clerk, cashier, or other officer of any corpo-

ration incorporated under the laws of this state, who has the custody of the stock-registry books, is a nonresident of the state, it is the duty of the sheriff receiving a writ of execution issued out of any court of this state against the goods and chattels of a defendant in execution holding stock in such company to send by mail a notice in writing, directed to the nonresident clerk, cashier, or other officer at the postoffice nearest his reputed place of residence, stating in the notice that he, the sheriff, holds the writ of execution, and out of what court, at whose suit, for what amount, and against whose goods and chattels the writ has been issued, and that by virtue of such writ he seizes and levies upon all the shares of stock of the company held by the defendant in execution on the day of the date of such written notice. It is also the duty of the sheriff on the day of mailing the notice to affix and set up upon any office or place of business of such company, within his county, a like notice in writing, and on the same day to serve like notice in writing upon the president and directors of the company, or upon such of them as reside in his county, either personally or by leaving the same at their respective places of abode. The sending, setting up, and serving of such notices in the manner aforesaid constitutes a valid levy of the writ upon all shares of stock in such company held by the defendant in execution, which have not at the time of the receipt of the notice by the clerk, cashier, or other officer, who has custody of the stock-registry books, been actually transferred by the defendant; and thereafter any transfer or sale of such shares by the defendant in execution is void as against the plaintiff in the execution, or any purchaser of such stock at any sale thereunder.

C. S., s. 1206; Rev., s. 1217; 1901, c. 2, s. 71.

139. Duty and liability of nonresident custodian. The nonresident clerk, cashier, or other officer in such corporation, to whom notice in writing is sent as prescribed in the preceding section, shall send forthwith to the officer having the writ, a statement of the time when he received the notice and a certificate of the number of shares held by the defendant in the corporation at the time of the receipt, not actually transferred on the books of the corporation; and the sheriff, or other officer, on receipt by him of this certificate, shall insert the number of shares in the inventory attached to the writ. If the clerk, cashier, or other officer in such corporation neglects to send the certificate as aforesaid or willfully sends a false one, he is liable to the

plaintiff for double the amount of damages occasioned by his neglect, or false certificate, to be recovered in an action against him; but the neglect to send, or miscarriage of the certificate, does not impair the validity of the levy upon the stock.

C. S., s. 1207; Rev., s. 1218; 1901, c. 2, s. 72.

ART. 10. RECEIVERS.

140. Appointment and removal. When a corporation becomes insolvent or suspends its ordinary business for want of funds, or is in imminent danger of insolvency, or has forfeited its corporate rights, or its corporate existence has expired by limitation, a receiver may be appointed by the court under the same regulations that are provided by law for the appointment of receivers in other cases; and the court may remove a receiver or trustee and appoint another in his place, or fill any vacancy. Everything required to be done by receivers or trustees is valid if performed by a majority of them.

C. S., s. 1208; Rev., ss. 1219, 1223; Code, s. 668; 1901, c. 2, ss. 73, 79.

Corporations § 553. Where it appeared that a corporation was insolvent and was indebted to various creditors, and had no funds to conduct its business, and it had certain machinery alleged to belong to one of its creditors, and which was in danger of being lost, a receiver was properly appointed.—*Summit Silk Co. v. Kinston Spinning Co.*, 154 N. C. 421, 70 S. E. 820.

Corporations § 559. Where a receiver of a corporation is appointed after the commencement of an action against it, the plaintiff may still proceed against the corporation making the receiver a defendant.—*Black v. Consolidated Ry. & Power Co.*, 158 N. C. 468, 74 S. E. 468.

Corporations § 558. The selection of receiver in a stockholder's suit against corporation lies largely in discretion of the court.—*Mitchell v. Au-lander Realty Co.*, 169 N. C. 516, 86 S. E. 358.

Corporations § 559. Under law of North Carolina, appointment of a receiver for corporation does not *eo instanti* stop interest upon all of its interest bearing obligations.—*Moore v. Watauga & Y. R. Co.*, 173 N. C. 726, 92 S. E. 361.

Corporations § 553. If, during the existence of a corporation, its officers fraudulently or unlawfully dispose of any of its property, creditors are entitled to have a receiver appointed to sue for and recover it.—*Latta v. Catawba Electric & Power Co.*, 146 N. C. 285, 59 S. E. 1028.

Corporations § 553. Where a corporation had done no business for about 25 years, and there were no officers in existence, and no organization was maintained, a stockholder was entitled to maintain an action for the appointment of a receiver, although such corporation had not been dissolved in accordance with the provisions of the statute.—*Greenleaf v. Land & Lumber Co.*, 146 N. C. 505, 60 S. E. 424.

Corporations § 551. A solvent corporation cannot be placed in receivership to enable a stockholder, who had deposited his stock as collateral for a debt, to have an account of its assets.—*Huet v. Piedmont Spring Lumber Co.*, 138 N. C. 443, 50 S. E. 846.

Corporations § 561. The receiver of an insolvent corporation may, either in his own name or in that of the corporation, sue to collect the assets of the corporation, and have adjudicated in such suit all legal and equitable matters touching the rights of the corporation, its creditors and debtors.—*Smathers v. Western Carolina Bank*, 135 N. C. 410, 47 S. E. 893.

Corporations § 559. A decree in New York declaring the insolvency of a corporation of that state, and appointing receivers thereof, does not operate to divest the lien acquired by the levy of an attachment on the real estate of such corporation in North Carolina.—*Kruger v. Bank of Commerce*, 123 N. C. 16, 31 S. E. 270.

Corporations § 559. Where a receiver was appointed to take entire control of all the assets of a corporation, it was not liable to an officer for salary during such receivership, since the performance of the contract between the corporation and the officer was rendered impossible by judicial action, and not by the fault of the corporation.—*Lenoir v. Linville Imp. Co.*, 126 N. C. 922, 36 S. E. 185.

Corporations § 544. The assets of an insolvent corporation constitute a trust fund for the payment of its debts, and their administration is peculiarly within the jurisdiction of a court of equity.—*In re McKinnon Co.*, 237 Federal 869.

Bankruptcy § 20. Pendency in a state court of a suit by stockholders to dissolve a corporation and appointment of a receiver more than four months before petition in bankruptcy does not defeat creditors' right to have the estate administered in the bankruptcy court, where they asserted that right as soon as the corporation was known to be insolvent and had committed an act of bankruptcy.—*Bank of Andrews v. Gudger*, 212 Federal 49, 128 C. C. A. 505.

Bankruptcy § 20. A receiver of a corporation appointed by a state court in behalf of stockholders could not hold the corporate property adversely to the receiver in bankruptcy claiming on behalf of the creditors.—*Ibid.*

141. Powers and bond. The receiver has power and authority to—

1. Demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description of the corporation.

2. Foreclose mortgages, deeds of trust, and other liens executed to the corporation.

3. Institute suits for the recovery of any estate, property, damages, or demands existing in favor of the corporation, and he shall, upon application by him, be substituted as party plaintiff in the place of the corporation in any suit or proceeding pending at the time of his appointment.

4. Sell, convey, and assign all of the said estate, rights, and interest.

5. Appoint agents under him

6. Examine persons and papers, and pass on claims as elsewhere provided in this article.

7. Do all other acts which might be done by the corporation, if in being, that are necessary for the final settlement of its unfinished business.

The powers of the receiver may be continued as long as the court thinks necessary, and the receiver shall hold and dispose of the proceeds of all sales of property under the direction of the court, and, before acting, must enter into such bond and comply with such terms as the court prescribes.

C. S., s. 1209; Rev. ss. 1222, 1231; Code, s. 668; 1901, c. 2, ss. 74, 84.

Usury § 129. A receiver of a corporation may maintain a plea of usury.—Riley & Co. v. Sears & Co., 154 N. C. 509, 70 S. E. 997.

Corporations § 561. A receiver of an insolvent corporation may sue in his own name or in that of the corporation to collect the assets of the corporation, and have adjudicated in such suit all legal and equitable matters touching the rights of the corporation, its creditors and debtors.—Smathers v. Western Carolina Bank, 135 N. C. 410, 47 S. E. 893.

Receivers § 182. Where a resident creditor of an insolvent corporation bank brought suit in another state, which prevented or interfered with the collection of the assets of the bank by the receiver, the latter was entitled to enjoin the prosecution of such suit.—Davis v. Butters Lumber Co., 132 N. C. 233, 43 S. E. 650.

Receivers § 78. Property in the hands of a receiver, cannot be sold under execution without leave of court.—Pelletier v. Greenville Lumber Co., 123 N. C. 596, 31 S. E. 855.

Corporations § 561. The receiver of a corporation can sue a debtor either in his own name or in name of the corporation.—Gray v. Lewis, 94 N. C. 392; Davis v. Industrial Mfg. Co., 114 N. C. 321, 19 S. E. 371.

Corporations § 561. Being under the control of the court, no one but receiver can collect the assets of an insolvent corporation.—Dunn v. Johnson, 115 N. C. 259, 20 S. E. 390.

Receivers § 218. The liability of sureties on a receiver's bond is properly enforced by independent action against them.—Black v. Gentry, 119 N. C. 502, 26 S. E. 43.

Receivers § 218. Where judgment has been recovered against the receiver, he is not a necessary party to an action against the sureties on his bond.—Ibid.

142. Title and inventory. All of the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects, upon the appointment of a receiver, forthwith vest in him, and the corporation is divested of the title thereto. Within thirty days after his appointment he shall lay before the court a full and complete inventory of all estate, property, and effects of the corporation, its na-

ture and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and shall make a report of his proceedings to the superior court at every civil term during the continuance of the trust.

C. S., s. 1210; Rev., ss. 1224, 1225; 1901, c. 2, ss. 75, 80.

Corporations § 561. Upon the insolvency of a corporation and the appointment of a receiver, the corporate property vests in the receiver from his appointment, and the receiver represents the creditors as well as the owner, excluding the general creditor from taking any separate or effective step on his own account in furtherance of his claim; and the proceedings for the receivership is in the nature of judicial process by which the rights of the general creditors are "fastened upon the property."—*The Observer Co. v. Little*, 175 N. C. 42, 94 S. E. 526.

Receivers § 77. The title to the property of a corporation vests in the receiver at the time he has been duly appointed by the court, from which time the corporation is divested thereof, and a judgment against the corporation entered thereafter, but before the docketing of the order or the qualifying of the receiver thereunder, can acquire no lien in favor of the judgment creditor.—*Odell Hardware Co. v. Holt-Morgan Mills*, 173 N. C. 308, 92 S. E. 8.

Receivers § 77. A judgment rendered against a corporation does not relate back, by implication of law, to the beginning of the term, so as to create a lien on the corporate property as against the vesting of the lien in a receiver, who had in the meanwhile been appointed.—*Ibid*.

Receivers § 77. The receiver holds the legal title to corporate property, but he holds it for the benefit of the equitable owner, the corporation, whose property is to be administered by him under the orders of the court.—*Southern Pants Co. v. Rochester German Ins. Co.*, 159 N. C. 78, 74 S. E. 812.

Corporations § 560. Where a prior deed of trust was insufficient to create a lien as against creditors and purchasers because insufficiently probated, the receiver took the property freed from the lien of the deed, and a deed by the receiver made pursuant to orders of the court passed the title free from the deed of trust.—*Witherell v. Murphy*, 154 N. C. 82, 69 S. E. 748.

Receivers § 180. The failure to name the corporation was not error, since an action against the receivers of an insolvent corporation is in effect an action against the corporation.—*Hollowell v. Norfolk Southern R. Co.*, 153 N. C. 19, 68 S. E. 894; *Kessenger v. Fitzgerald*, 152 N. C. 247, 67 S. E. 588.

See *Black v. Consolidated Railway & Power Co.*, 158 N. C. 468, 74 S. E. 468.

Receivers § 70. The title of a receiver relates only to the time of his appointment, and any liens existing at that time are not divested.—*Roberts v. Bowen Mfg. Co.*, 169 N. C. 27, 85 S. E. 45; *Battery Park Bank v. Western Carolina Bank*, 127 N. C. 432, 37 S. E. 461.

Receivers § 77. Property in the hands of a receiver cannot be sold under execution without leave of court.—*Pelletier v. Greenville Lumber Co.*, 123 N. C. 596, 31 S. E. 855.

Receivers § 71. A receiver's possession is that of the court, taken for the purpose of securing the thing in controversy, so that it may be subject to such disposition as the court may finally decide.—*Gobble v. Orrell*, 163 N. C. 489, 79 S. E. 957.

143. May send for persons and papers; penalty for refusing to answer. The receiver has power to send for persons and papers, and to examine any persons, including the creditors, claimants, president, directors, and other officers and agents of the corporation, on oath or affirmation (which oath or affirmation the receiver may administer), respecting its affairs and transactions and its estate, money, goods, chattels, credits, notes, bills, choses in action, real and personal estate and effects of every kind; and also respecting its debts, obligations, contracts, and liabilities, and the claims against it; and if any person refuses to be sworn or affirmed, or to make answers to such questions as may be put to him, or refuse to declare the whole truth touching the subject-matter of the examination, the court may, on report of the receiver, commit such person as for contempt.

C. S., s. 1211; Rev., s. 1227; 1901, c. 2, s. 78.

See *Black v. Consolidated Railway & Power Co.*, 158 N. C. 468, 74 S. E. 468.

144. Proof of claims; time limit. All claims against an insolvent corporation must be presented to the receiver in writing; and the claimant, if required, shall submit himself to such examination in relation to the claim as the receiver directs, and shall produce such books and papers relating to the claim as shall be required. The receiver has power to examine under oath or affirmation all witnesses produced before him touching the claim, and shall pass upon and allow or disallow the claims or any part thereof, and notify the claimants of his determination. The court may limit the time within which creditors may present and prove to the receiver their respective claims against the corporation, and may bar all creditors and claimants failing to do so within the time limited from participating in the distribution of the assets of the corporation. The court may also prescribe what notice, by publication or otherwise, must be given to creditors of such limitation of time.

C. S., s. 1212; Rev., ss. 1228, 1229; 1901, c. 2, ss. 81, 82.

Receivers § 174. In order to maintain an action against the receiver, plaintiff's claim must be first presented to the receiver and leave obtained from the court to begin a separate action.—*Black v. Consolidated Railway & Power Co.*, 158 N. C. 468, 74 S. E. 468.

Receivers § 174. In determining whether good cause is shown for separate action against receiver of an insolvent corporation, the convenience of witnesses, additional cost, and various circumstances addressed to the trial court's discretion should be considered.—*Ibid.*

Receivers §§ 78-79. It is the purpose of these sections to save expenses and to avoid needless litigation and costs, and to this end it is required

that every claim against the corporation shall be presented to the receiver, and he is given full power to investigate.—*Pelletier v. Greenville Lumber Co.*, 123 N. C. 595, 31 S. E. 855; *Crutchfield v. Hunter*, 138 N. C. 54, 50 S. E. 557.

145. Report on claims to court; exceptions and jury trial. It is the duty of the receiver to report to the term of the superior court subsequent to a finding by him as to any claim against the corporation, and exceptions thereto may be filed by any person interested, within ten days after notice of the finding by the receiver, and not later than within the first three days of the said term; and, if, on an exception so filed, a jury trial is demanded, it is the duty of the court to prepare a proper issue and submit it to a jury; and if the demand is not made in the exceptions to the report the right to a jury trial is waived. The judge may, in his discretion, extend the time for filing such exceptions.

C. S., s. 1213; Rev., s. 1230; 1901, c. 2, s. 82.

See *Black v. Consolidated Ry. & Power Co.*, 158 N. C. 468, 74 S. E. 468.

146. Property sold pending litigation. When the property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court may order the receiver to sell the same, clear of incumbrance, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court directs.

C. S., s. 1214; Rev., s. 1232; 1901, c. 2, s. 86.

147. Compensation and expenses. Before distribution of the assets of an insolvent corporation among the creditors or stockholders, the court shall allow a reasonable compensation to the receiver for his services, not to exceed five per cent upon receipts and disbursements, and the costs and expenses of administration of his trust and of the proceedings in said court, to be first paid out of said assets.

C. S., s. 1215, Rev., s. 1226; 1901, c. 2, s. 88.

Corporations § 480. The payment of receiver's cost does not postpone lien of purchase money mortgagee to the payment of such costs.—*Humphrey Bros. v. Buell-Crocker Lumber Co.*, 174 N. C. 514, 93 S. E. 971.

Corporations § 565. Costs and legitimate expenses in a suit to distribute the assets of an insolvent corporation must be paid out of the funds of the corporation, and the balance must be distributed among the creditors according to priority.—*Hickson Lumber Co. v. Gay Lumber Co.* 150 N. C. 281, 63 S. E. 1048.

Receivers § 154. The allowance of commissions and counsel fees to a receiver by the superior court is prima facie correct, and the Supreme Court will alter the same only when they are clearly inadequate or excessive.—*Graham v. Carr*, 133 N. C. 449; 45 S. E. 847.

Receivers § 197. A receiver may be allowed commissions on both receipts and disbursements to the extent of 5 per cent on each.—*Battery Park Bank v. Western Carolina Bank*, 126 N. C. 531, 36 S. E. 39.

Receivers § 199. A receiver may be paid at stated intervals during the continuance of his functions, and need not wait until the termination of his trust.—*Ibid.*

Receivers § 195.—The commissions of the receiver of an insolvent corporation are to be included in expenses, and not classed as a debt.—*Wilson Cotton Mills v. Randleman Cotton Mills*, 115 N. C. 475, 20 S. E. 770.

148. Debts provided for, receiver discharged. When a receiver has been appointed, and it afterwards appears that the debts of the corporation have been paid, or provided for, and that there remains, or can be obtained by further contributions, sufficient capital to enable it to resume its business, the court may, in its discretion, a proper case being shown, discharge the receiver, and decree that the property, rights, and franchises of the corporation revert to it, and thereafter the corporation may resume control of the same, as fully as if the receiver had never been appointed.

C. S., s. 1216; Rev., s. 1220; 1901, c. 2, s. 76.

149. Reorganization. When a majority in interest of the stockholders of the corporation have agreed upon a plan for its reorganization and a resumption by it of the management and control of its property and business, the corporation may, with the consent of the court, upon the reconveyance to it of its property and franchises, either by deed or decree of the court, mortgage the same for an amount necessary for the purposes of the reorganization; and may issue bonds or other evidences of indebtedness, or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the reorganization.

C. S., s. 1217; Rev., s. 1221; 1901, c. 2, s. 27.

ART. 11. TAXES AND FEES.

150. Taxes for filing. For filing a certificate or other paper in the office of the secretary of state, for the corporate purposes named below, the following taxes shall be paid to the state treasurer for the use of the state:

1. Certificate of incorporation, or extension or renewal of corporate existence, 40 cents for each \$1,000 of the total amount of capital stock authorized, but in no case less than \$40.

2. Increase of capital stock, 40 cents for each \$1,000 of the total increase authorized, but in no case less than \$40.

3. Change of name or nature of business, amended certificate of incorporation (other than those otherwise provided for in this section), decrease of capital stock, increase or decrease of par value or number of shares, \$40.

4. Dissolution or change of principal place of business, \$5.

The above taxes are not cumulative, but when two or more are incurred at the same time, the largest single tax applicable shall apply. No such taxes need be paid by a benevolent, religious, educational, or charitable organization with no capital stock, or by a corporation created by virtue of section 1123 (herein 13) under this chapter for public parks and drives.

C. S., s. 1218; Rev., s. 1233; 1901, c. 2, s. 96; 1911, c. 155, s. 5; Ex. Session 1920, c. 1, s. 7c.

151. Fees to secretary of state and clerk of superior court. The secretary of state shall collect and retain the following fees: For recording the certificate of incorporation, one dollar for the first three copy sheets and ten cents for each copy sheet in excess thereof, and for official seal one dollar; for copying, the same fees as for recording. There shall be paid the clerk of the superior court for recording the certificate of incorporation a fee of three dollars.

C. S., s. 1219; Rev., s. 1234; Code, s. 680; 1893, c. 318, s. 4; 1901, c. 2, s. 96; 1917, c. 231, s. 84.

152. Corporate property in receiver's hands liable for taxes. When listed or unlisted taxes are duly assessed and charged against and are due and unpaid by a corporation with chartered rights, doing business or with property in this state, or against a person residing in, doing business, or having property in this state, it is competent for an officer or tax collector who has the tax list to levy upon, seize, and take possession of that part of the property belonging to the corporation necessary to pay such taxes, even though the property is in the hands of a receiver duly appointed; and the officer or collector need not apply to the court appointing the receiver, or with jurisdiction of the property or the receiver, for an order for the payment of said taxes.

This section applies to all taxes, whether state, county, town or municipal, and shall be liberally construed in favor of and in furtherance of the collection of such taxes.

C. S., s. 1220; Rev., ss. 1236, 1237; Code, ss. 699, 670.

ART. 12. REORGANIZATION.

153. Corporations whose property and franchises sold under order of court or execution. When the property and franchises of a public-service corporation are sold under a judgment or decree of a court of this state, or of the district court of the United States, or under execution, to satisfy a mortgage debt or other encumbrance thereon, such sale vests in the purchaser all the right, title, interest and property of the parties to the action in which such judgment or decree was made, to said property and franchise, subject to all the conditions, limitations and restrictions of the corporation; and the purchaser and his associates, not less than three in number, thereupon become a new corporation, by such name as they select, and they are the stockholders in the ratio of the purchase money by them contributed; and are entitled to all rights and franchises and subject to all the conditions, limitations and penalties of the corporation whose property and franchises have been so sold. In the event of the sale of a railroad in foreclosure of a mortgage or deed of trust, whether under a decree of court or otherwise, the corporation created by or in consequence of the sale succeeds to all the franchises, rights and privileges of the original corporation only when the sale is of all the railroad owned by the company and described in the mortgage or deed of trust, and when the railroad is sold as an entirety. If a purchaser at any such sale is a corporation, such purchasing corporation shall succeed to all the properties, franchises, powers, rights, and privileges of the original corporation: Provided, that this shall not affect vested rights and shall not be construed to alter in any manner the public policy of the state now or hereafter established with reference to trusts and contracts in restraint of trade.

C. S., s. 1221; Rev., s. 1238; Code, ss. 697, 698; 1897, c. 305; 1901, c. 2, s. 99; 1913, c. 25, s. 1; 1919, c. 75.

Corporations § 575. A judicial sale of the property and franchises of a corporation effectually destroys or annuls the stock holdings of the former stockholders.—*Pocahontas Fuel Co. v. Tarboro Cotton Factory*, 174 N. C. 245, 93 S. E. 790; *Wood v. Staton*, 174 N. C. 245, 93 S. E. 794.

Corporations § 572. The Court may decree a sale of the corporate franchise with the property conferring upon the purchasers the right to reorganize a new corporation.—*Ibid.*

Corporations § 572. Statute applies only to outright purchase of property under an execution or judicial sale and not to a lease of property.—Hyder v. Southern R. Co., 167 N. C. 584, 83 S. E. 689.

Corporations § 632. A railroad corporation of another state purchasing the property of a railroad corporation of this state at a foreclosure sale under a mortgage or deed of trust becomes a new corporation of this state to the extent of the franchise of the domestic corporation thus acquired.—Hurst v. Southern Railway Co., 162 N. C. 368, 78 S. E. 434.

Corporations § 603. Where a sale is made under a deed of trust or mortgage, executed by any corporation on all its works and property, upon conveyance to the purchaser, the corporation is *ipso facto* dissolved.—Latta v. Catawba Electric & Power Co., 146 N. C. 285, 59 S. E. 1028.

Corporations § 632. Where a foreign corporation bought in railroad property at a sale under mortgage, it became a new domestic corporation, subject to the jurisdiction of the state courts.—Carolina Coal & Ice Company v. Southern R. Co., 144 N. C. 732, 57 S. E. 444.

Corporations § 632. The sale and conveyance of the property and franchise of the Western North Carolina Railroad Company, made by a special master to the Southern Railway Company, a foreign corporation, under a decree of foreclosure of a second mortgage, subject to an existing first mortgage, did not *ipso facto* make the purchase a domestic corporation, nor did such sale and purchase make the Western North Carolina Railroad Company an integral part of the Southern Railway Company.—James v. Western North Carolina Railroad Company, 121 N. C. 523, 28 S. E. 537.

Corporate property of a North Carolina railroad company, covered by, a legally authorized mortgage of all its franchise and property, does not continue liable for the debts of such company accruing after the sale on the foreclosure proceedings to a nonresident railroad company authorized by its charter to make the purchase, because of the failure of the latter to exercise the privilege of organizing a domestic corporation to operate the purchased property.—Julian, Sheriff, and James, Administratrix, v. Central Trust Company and Southern Railway Co., 193 U. S. 93, 48 Law. Ed. 629, 24 S. Ct. 399.

154. New owners to meet and organize. The persons for whom the property and franchises have been purchased shall meet within thirty days after the delivery of the conveyance made by virtue of said process or decree, and organize the new corporation, ten days written notice of the time and place of the meeting having been given to each of the said persons. At this meeting they shall adopt a corporate name and seal, determine the amount of the capital stock of the corporation, and shall have power and authority to make and issue certificates of stock in shares of such amounts as they see fit. The corporation may then, or at any time thereafter, create and issue preferred stock to such an amount, and at such time, as they may deem necessary.

C. S., s. 1222; Rev., ss. 1239, 1240; 1901, c. 2, ss. 100, 101, 102.

Corporations § 221. Where the purchasers of the entire property of a defunct corporation under the decree of the court have in other respects complied with the requirements of the statute as to reorganization, the fact that they have assumed to continue operations without changing the seal, or

determine upon a different amount of capitalization, does not necessarily affect the fact of proper reorganization, there being no statutory requirement to change them.—Wood v. Staton, 174 N. C. 245, 93 S. E. 794; Pochontas Fuel Co. v. Tarboro Cotton Factory, 174 N. C. 245, 93 S. E. 790.

155. Certificate to be filed with secretary of state. It is the duty of the new corporation, within one month after its organization to make certificate thereof, under its common seal, attested by the signature of its president, specifying the date of the organization, the name adopted, the amount of capital stock, and the names of its president and directors, and transmit the certificate to the secretary of state, to be filed and recorded in his office, and there remain of record. A certified copy of this certificate so filed shall be recorded in the office of the clerk of the superior court of the county in which is located the principal office of the corporation, and is the charter and evidence of the corporate existence of the new corporation.*

C. S., s. 1223; Rev., s. 1241; 1901, c. 2, s. 103.

156. Effect on liens and other rights. Nothing contained in this article in any manner impairs the lien of a prior mortgage, or other encumbrance, upon the property or franchises conveyed under the sale, when by the terms of the process or decree under which the sale was made, or by operation of law, the sale was made subject to the lien of such prior mortgage or other encumbrance. No such sale and conveyance or organization of such new corporation in any way affects the rights of any person body politic, or corporate, not a party to the action in which the decree was made, nor of the said party except as determined by the decree. When a trustee has been made a party to such action and his cestui que trust, for reason satisfactory to the court, has not been made a party thereto, the rights and interest of the cestui que trust are concluded by the decree.

C. S., s. 1224; Rev., s. 1241; 1901, c. 2, s. 103.

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ART. 1. CRIMINAL LIABILITY OF CORPORATE OFFICERS AND EMPLOYEES.

157. Malfeasance of bank officers and agents. If any president, director, cashier, teller, clerk or agent of any bank or other corporation shall embezzle, abstract or willfully misapply any of the moneys, funds or credits of the bank, or shall, without authority from the directors, issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any note, bond, draft, bill of exchange, mortgage, judgment or decree, or make any false entry in any book, report or statement of the bank with the intent in either case to injure or defraud or to deceive any officer of the bank, or if any person shall aid and abet in the doing of any of these things, he shall be guilty of a felony, and upon conviction shall be imprisoned in the state's prison for not less than four months nor more than fifteen years, and likewise fined, at the discretion of the court.

C. S., s. 4401; Rev., s. 3325; 1903, c. 275, s. 15.

158. Making false entries in banking accounts; misrepresenting assets and liabilities of banks. If any person shall willfully and knowingly subscribe to, or make, or cause to be made, any false statement or false entry in the books of any corporation, partnership, firm or individual transacting a banking business, or shall knowingly subscribe to or exhibit false papers, with the intent to deceive any person authorized to examine into the affairs of such corporation, partnership, firm or individual, or shall willfully and knowingly make, state or publish any false statement of the amount of the assets or liabilities of any such corporation, partnership, firm or individual, he shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the state's prison not less than four months nor more than ten years.

C. S., s. 4402; Rev., s. 3326; 1903, c. 275, s. 27.

159. Influencing agents and servants in violating duties owed employers. Any person who gives, offers or promises to an agent, employee or servant any gift or gratuity whatever with intent to influence his action in relation to his principal's, employer's or master's business; any agent, employee or servant who requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner in relation to his principal's, employer's or master's business; any agent, employee or servant who, being authorized to procure

materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives, directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; and any person who gives or offers such an agent, employee or servant such commission, discount or bonus, shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

C. S., s. 4475; 1913, c. 190, s. 1.

160. Witness required to give self-criminating evidence; no suit or prosecution to be founded thereon. No person shall be excused from attending, testifying or producing books, papers, contracts, agreements and other documents before any court, or in obedience to the subpoena of any court, having jurisdiction of the crime denounced in the preceding section, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or to subject him to a penalty or to a forfeiture; but no person shall be liable to any suit or prosecution, civil or criminal, for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before such court or in obedience to its subpoena or in any such case or proceeding: Provided, that no person so testifying or producing any such books, papers, contracts, agreements or other documents shall be exempted from prosecution and punishment for perjury committed in so testifying.

C. S., s. 4476; 1913, c. 190, s. 2.

161. Blacklisting employees. If any person, agent, company or corporation, after having discharged any employee from his or its service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company or corporation, such person, agent or corporation shall be guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars; and such person, agent, company or corporation shall be liable in penal damages to such discharged person, to be recovered by civil action. This section shall not be construed as prohibiting any person or agent of any company or corporation from furnishing in writing, upon request, any other person, company or corporation to whom such discharged person or employee has

applied for employment, a truthful statement of the reason for such discharge.

C. S., s. 4477; 1909, c. 858, s. 1.

Master & Servant § 32. Under the common law an employer would not be liable in damages if in good faith he made a report of the character of his discharged employee to another who was considering engaging his services; but if the report was knowingly false, or if it was maliciously made, it was actionable.—*Seward v. Receivers of Seaboard Air Line*, 159 N. C. 241, 75 S. E. 34.

Master & Servant § 32. When a report is made by one railroad company to another upon a discharged engineer, the report is regarded as privileged, and in the absence of express malice no cause of action can be based on its publication.—*Ibid.*

162. Conspiring to blacklist employees. It shall be unlawful for two or more persons to agree together to blacklist any discharged employee or to attempt, by words or writing or any other means whatever, to prevent such discharged employee, or any employee who may have voluntarily left the service of his employer, from obtaining employment with any other person or company. Persons violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, at the discretion of the court.

C. S., s. 4478; 1909, c. 858, s. 2.

163. Issuing nontransferable script to laborers. If any person who employs laborers by the day, week or month shall issue in payment for the services of such laborers any ticket, certificate or other script bearing upon its face the word "nontransferable," or shall issue such ticket, certificate or other script in any form that would render it void by transfer from the person to whom issued, or shall refuse to pay to the person holding the same its face value, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars nor more than fifty dollars for each offense, or imprisoned not more than thirty days.

C. S., s. 4479; Rev., s. 3730; 1889, c. 280; 1891, c. 78; 1891, c. 456; 1891, c. 46; 1891, cc. 167, 370; 1895, c. 127; 1891, cc. 167, 456.

An assignee of an order payable in merchandise for labor done is not entitled to demand and receive payment in money, instead of merchandise.—*Marriner v. Roper Company*, 112 N. C. 164, 16 S. E. 906.

ART 2. CHILD WELFARE.

164. Employment of children under fourteen regulated. No child under the age of fourteen years shall be employed, or per-

mitted to work, in or about or in connection with any mill, factory, cannery, workshop, manufacturing establishment, laundry, bakery, mercantile establishment, office, hotel, restaurant, barber shop, bootblack stand, public stable, garage, place of amusement, brick yard, lumber yard, or any messenger or delivery service, except in cases and under regulations prescribed by the commission herein created. The employments in this section enumerated shall not be construed to include bona fide boys' and girls' canning clubs recognized by the agricultural department of this state; and such canning clubs are hereby expressly exempted from the provisions of this article.

C. S., s. 5032; 1919, c. 100, s. 5.

165. Prohibited employments of children under sixteen. No person under sixteen years of age shall be employed, or permitted to work, at night in any of the places or occupations referred to in the first preceding section, between the hours of nine p. m. and six a. m., and no person under sixteen years of age shall be employed or permitted to work in or about or in connection with any quarry or mine.

C. S., s. 5033; 1919, c. 100, s. 6.

166. Age certificates. If the employer of any person under sixteen years of age shall, at the time of such employment, in good faith, procure, rely upon, and keep on file a certificate issued in such form and under such conditions and by such persons as the said commission herein provided for shall prescribe, showing that the person is of legal age for such employment, such certificate shall be prima facie evidence of the age of the person and the good faith of the employer. No person shall knowingly make a false statement or present false evidence in or in relation to any such certificate or application therefor, or cause any false statement to be made which may result in the issuance of an improper certificate of employment.

C. S., s. 5034; 1919, c. 100, s. 10.

167. Commission may employ agents. The commission shall have authority to appoint and employ such agents for the purpose of enforcing the provisions of this article as may be found to be necessary, and they may use the county superintendent of public welfare or chief school attendance officer or truant officer of the several counties for the purpose of carrying out such provisions, and they may use the agents specially designated for carrying out the provisions of this article to aid in carrying out

the provisions of the general compulsory school attendance law under subchapter nine (IX) of the chapter on education.

C. S., s. 5035; 1919, c. 100, s. 9.

168. Inspection by agents; obstruction unlawful. For the purpose of securing the proper enforcement of the provisions of this article and of the laws relating to seats for women employees, and the laws requiring separate toilets for sexes and races, the commission, or its duly authorized agents, shall have authority to enter and inspect, at any time, mines, quarries, mills, factories, canneries, workshops, manufacturing establishments, laundries, bakeries, mercantile establishments, offices, hotels, restaurants, barber shops, bootblack stands, public stables, garages, places of amusement, brick yards, lumber yards, and other places of employment; and it shall be unlawful for any person, firm, or corporation to refuse permission to enter, obstruct, or prevent any duly authorized agent of the commission in his effort to make the inspection herein provided for.

C. S., s. 5036; 1919, c. 100, s. 8.

169. Expenses of commission. The state treasurer shall honor all warrants for necessary expenses incurred by the commission for meeting the salaries and expenses of any agents employed by the commission in the enforcement of this article, and the necessary expenses incurred by the commission in carrying out the provisions of this article, out of funds not otherwise appropriated, such warrants to be drawn upon the state auditor by the commission hereby created, or its duly authorized agent. Such expenses so incurred shall not exceed the sum of six thousand dollars per annum.

C. S., s. 5037; 1919, c. 100, s. 11.

170. Violations of this article and of certain other laws a misdemeanor. Any person, firm, or corporation violating any of the provisions of this article, or of the laws relating to seats for women employees or of the laws requiring separate toilets for sexes and races, shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, within the discretion of the court.

C. S., s. 5038; 1919, c. 100, s. 12.

ART. 3. CORPORATION'S DUTY TO EMPLOYEES.

171. Week's work to be sixty hours. Sixty hours shall constitute a week's work in all factories and manufacturing establishments of the state, and no minor nor woman shall be worked in such factory or establishment a longer period than sixty hours in

one week and no adult male shall be worked in such factory or establishment for a longer period than sixty hours in one week unless there shall be a written contract entered into between said adult male and his employer to that effect in which the employer shall agree to pay said adult male extra compensation for extra hours he may work. No employee in any factory or manufacturing establishment in this state shall be worked exceeding eleven hours in any one day: Provided, this section shall not apply to engineers, firemen, superintendents, overseers, section and yard hands, office men, watchmen, or repairers of breakdowns.

C. S., s. 6554; 1915, c. 148, s. 2.

172. Seats for women employees; failure to provide a misdemeanor. All persons, firms, or corporations who employ females in a store, shop, office, or manufacturing establishment, as clerks, operatives, or helpers in any business, trade, or occupation carried on or operated in the state of North Carolina, shall be required to procure and provide proper and suitable seats for all such females, and shall permit the use of such seats, rests, or stools as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such seats, stools, or rests when any such female employee or employees are not actively employed or engaged in their work in such business or employment.

If any employer of female help in the state of North Carolina shall fail, neglect, or refuse to provide seats, as provided in this article, on or before the first day of June, one thousand nine hundred and nine, or shall make any rules, orders, or regulations in his or its shop, store, or other place of business requiring females to remain standing when not necessarily employed or engaged in service or labor therein, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, in the discretion of the court.

C. S., s. 6555; 1909, c. 857, ss. 1, 2.

173. Medical chests in factories; failure to provide a misdemeanor. Every person, firm, or corporation operating a factory or shop employing over twenty-five laborers, in which machinery is used for any manufacturing purpose or for any purpose except for elevation or for heating or hoisting apparatus, shall at all times keep and maintain free of expense to the employees a medical or surgical chest which shall contain two porcelain pans, two tourniquets, gauze, absorbent cotton, adhesive plasters, bandages, antiseptic soap, one bottle of carbolic acid with directions on bot-

tle, one bottle antiseptic tablets, one pair of scissors, one folding stretcher, all of which shall not cost to exceed ten dollars, for the treatment of persons injured or taken ill upon the premises.

Any person, firm, or corporation violating this section shall be subject to a fine of not less than five dollars nor more than twenty-five dollars for every week during which such violation continues.

C. S., s. 6556; 1911, c. 57.

174. Shelter at railroad division points required; failure to provide a misdemeanor. It shall be the duty of every person, firm, or corporation that may now or hereafter own, control, or operate any line of railroad in the state of North Carolina, to erect and maintain at every division point where cars are regularly taken out of trains for repairs or construction work, or where other railroad equipment is regularly made, repaired, or constructed, a building or shed with a suitable and sufficient roof over the repair and construction track or tracks so as to provide that all men or employees permanently employed in the construction and repair of cars, trucks, or other railroad equipment of whatever description shall be under shelter and protected during snows, rains, sleet, hot sunshine, and other inclement weather: Provided, the corporation commission shall have the power to direct the points at which sheds shall be erected, and the character of the sheds: Provided further, that such order shall only be made after a hearing of which public notice shall have been given.

On and after the first day of December, nineteen hundred and thirteen, any person, firm, or corporation failing to comply with the requirements of this section shall be guilty of a misdemeanor, and for each offense shall be fined not less than one hundred dollars nor more than five hundred dollars. Each day of such failure shall constitute a separate offense.

C. S., s. 6557; 1913, c. 65; 1913, c. 117.

175. Railroad employees to be paid twice a month. All persons, firms, companies, corporations, or associations owning, leasing, or operating any railroad or railroads, wholly or partially within this state, shall pay and settle with their employees engaged or employed in shops, round-houses, or repair shops within this state at least twice in each month, which settlements shall not be less than two weeks nor more than three weeks apart, and shall, in such settlements, pay such employees the full amounts due them for their work and services up to the date of the preceding settlement, and such payment shall be made in law.

ful money of the United States, or by check or cash order redeemable by the maker thereof for its face value in lawful money of the United States upon demand of or presentation by the lawful holder thereof: Provided, this section shall not apply to repair shops where less than ten employees are engaged.

C. S., s. 6558; 1915, c. 92.

176. When separate toilets required. All persons and corporations employing males and females in any manufacturing industry, or other business employing more than two males and females in towns and cities having a population of one thousand persons or more, and where such employees are required to do indoor work chiefly, shall provide and keep in a cleanly condition separate and distinct toilet rooms for such employees, said toilets to be lettered and marked in a distinct manner, so as to separate the white and colored males and females of both sexes: Provided, that the provisions of this section shall not apply to cases where toilet arrangements or facilities are furnished by said employer off the premises occupied by him.

C. S., s. 6559; 1913, c. 83, s. 1

177. Location; intruding on toilets misdemeanor. It shall be the duty of the persons or corporation mentioned under this article to locate their toilets for males and females, white and colored, in separate parts of their buildings or grounds, in buildings hereafter erected, and in those now erected all closets shall be separated by substantial walls of brick or timber, and any employee who shall wilfully intrude or use any toilet not intended for his or her sex or color shall be guilty of a misdemeanor and upon conviction shall be fined five dollars.

C. S., s. 6560; 1913, c. 83, s. 4.

178. Failure to provide toilets a misdemeanor. Any person or corporation refusing to comply with the provisions of the second preceding section shall be guilty of a misdemeanor, and upon conviction fined five dollars for the first offense and five dollars for each day they shall fail to make the provisions required under this article.

C. S., s. 6561; 1913, c. 83, s. 2.

179. Police in towns to enforce article. It shall be the duty of the police officers of any town or city to investigate the place of business of any person or corporation employing males and females and see that the provisions of this article are put in force, and it shall be their duty to swear out a warrant before the mayor or other proper officer of any town or city and prosecute all per-

sons, corporations, and managers of corporations violating any of the provisions of this article.

C. S., s. 6562; 1913, c. 83, s. 3.

180. Sheriff in county to enforce article. When any persons or corporations locate outside of any city or town, its manufacturing plant or other business, it shall be the duty of the sheriff of the county to make investigation of the condition of the toilets used by such manufacturing plant or business and see that the provisions of this article are complied with, and it shall be his duty to swear out a warrant before a justice of the peace and prosecute any one violating the provisions of this article.

181. Counties exempted from article. Sections 176, 177, 178, 179, and 180, of this article shall not apply to Sampson, Harnett, Lee, Johnston, Northampton, Cleveland, Rutherford, Polk, and Henderson Counties.

C. S., s. 6564; 1913, c. 83, s. 6.

182. Construction of buildings regulated. All hotels, lodging houses, school dormitories, hospitals or sanitariums hereafter constructed in this state, over two stories in height and over one hundred feet in length, shall be constructed so that there shall be at least two pairs of stairs for the use of guests leading from the ground floor to the uppermost story, and for larger buildings such number as the proper officials shall designate. Every hotel, lodging house, school dormitory, hospital or sanitarium in the state, three stories and over in height, shall be provided, without delay, with permanent iron balconies with iron stairs leading from one balcony to the other, to be placed at the end of each hall above the second story, in case such hotel, lodging house, school dormitory, hospital or sanitarium is over one hundred and fifty feet in length, and in other cases such number as may be directed by the insurance commissioner or chief of fire department of such city or town in which such hotel, lodging house, school dormitory, hospital or sanitarium is located. Such balconies and iron stairs are to be constructed at the expense of the owner of the building. Where hotels, lodging houses, school dormitories, hospitals or sanitariums, already built and only three stories in height, are, in the opinion of the insurance commissioner, provided with sufficient inner stairways, so located as to furnish sufficient egress in case of fire, the the commissioner may waive the requirement for outside iron balconies and stairs. This article shall not apply to private residences at which lodgers are not received for hire.

C. S., s. 6081; 1909, c. 637, s. 1.

183. Places of public amusement, how constructed. Every theater, opera house, or other like place of public amusement shall have as many doors for egress therefrom as may be necessary and can be made consistently with the proper strength of the building; all such doors shall be hung so as to open outwardly, or both outwardly and inwardly; and the seats therein shall be arranged in rows properly spaced, with aisles of adequate width, so as to afford easy egress therefrom. All scenery shall be made as secure against becoming inflamed as reasonably practical, and also all reasonably practical arrangements shall be made for the constant supply of water and other means for extinguishment of fires, and they shall be kept constantly effective during the presence of an audience. The insurance commissioner may require all theaters to be equipped with a front curtain of asbestos or other fireproof material, to be furnished by owner of the building, and this curtain shall be raised and lowered not less than twice before each performance, in order to guarantee its being in perfect working order.

C. S., s. 6082; 1909, c. 637, s. 2.

184. Doors in certain buildings to open outwardly. In all public schoolhouses and other buildings, and also all theatres, assembly rooms, halls, churches, factories with more than twenty employees, and all other buildings or places of public resort where people are accustomed to assemble (excepting schoolhouses and churches of one room on the ground floor) which shall hereafter be erected, together with all those heretofore erected and which are still in use as such buildings or places of resort, the doors for ingress and egress shall be so hung as to open outwardly from the audience rooms, halls, or workshops of such buildings or places, or the doors may be hung on double hinges, so as to open with equal ease outwardly or inwardly.

C. S., s. 6083; 1909, c. 637, s. 3.

185. Fire-escapes to be provided. All factories, manufacturing establishments, or workshops of three or more stories in height, in which thirty or more people are employed above the first floor thereof, shall be provided with one or (if the proper officials shall deem necessary) more outside fire-escapes, not less than six feet in length and three feet in width, properly and safely constructed, guarded by iron railings not less than three feet in length and taking in at least one door and one window or two windows at

each story and connected with the interior by easily accessible and unobstructed openings; and the fire-escapes shall connect by iron stairs not less than twenty-four inches wide, the steps to be not less than six inches tread, placed at not more than an angle of forty-five degrees slant, and protected by a well secured hand-rail on both sides, with a twelve-inch-wide drop ladder from the lowest platform reaching to the ground. No outside fire-escapes shall be required where there are already sufficient inside stairways. For every twenty people employed on any floor above the second floor of every factory and workshop there shall be one rope or portable fire-escape, and each story shall be amply supplied with means for extinguishing fires. All the main doors, both inside and outside, in factories, except fire doors, shall open outwardly, when the proper official shall so direct, and no outside or inside door of any building wherein operatives are employed shall be locked, bolted, or otherwise fastened during the hours of labor so as to prevent egress.

C. S., s. 6084; 1909, c. 637, s. 4.

186. Ways of escape provided. Every building now or hereafter used, in whole or in part, as a public building, public or private institution, schoolhouse, church, theater, public hall, place of assembly or place of public resort, and every building in which twenty or more persons are employed above the second story in a factory, workshop, or mercantile or other establishment, when the owner or agent of the owner of the building is notified in writing by the insurance commissioner or one of his deputies, shall be provided with proper ways of egress or other means of escape from fire sufficient for the use of all persons accommodated, assembled, employed, lodging or residing in such building or buildings, and such ways of egress and means of escape shall be kept free from obstructions, in good repair, and ready for use. Every room above the second story in any such building in which twenty or more persons are employed shall be provided with more than one way of egress by stairways on the inside or outside of the building. All doors in any building subject to the provisions of this article shall open outwardly, if the insurance commissioner or one of his deputies shall so direct in writing.

C. S., s. 6085; 1909, c. 637, s. 5.

187. Enforcement by insurance commissioner. The insurance commissioner is charged with the execution of this law, and he or the chief of the fire department is vested with all privileges, duties, and obligations placed upon them in this chapter, in re-

gard to the inspection of buildings, for the purpose of enforcing the provisions of this article in regard to the buildings and requirements herein. Any owner or occupant of premises failing to comply with the provisions of this article, in accordance with the orders of the authorities above specified, shall be guilty of a misdemeanor and punished by a fine of not less than ten dollars nor more than fifty dollars for each day's neglect. If any owner or lessee of any building referred to in this article shall deem himself aggrieved by any ruling or order of any chief of fire department or local inspector, he may within twenty-four hours appeal to the insurance commissioner, and the cause of complaint shall at once be investigated by the direction of the commissioner, and unless by his authority the order or ruling is revoked it shall remain in full force and effect and be forthwith complied with by the owner or lessee.

C. S., s. 6086; 1909, c. 637, s. 6.

ART. 4. HOURS OF SERVICE FOR EMPLOYEES OF CARRIERS.

188. Maximum continuous service. It shall be unlawful for any common carrier, its officers or agents, subject to this article, to require or permit any employee, subject to this article, to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: Provided, that no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a period longer than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period or not exceeding three days in any

week: Provided further, the corporation commission may, after a full hearing in a particular case and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

C. S., s. 6565; 1911, c. 112, s. 2.

189. Penalty for violation. Any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of the last preceding section shall be liable to a penalty of not to exceed five hundred dollars for each and every violation, to be recovered in suit or suits to be brought in the name of the state of North Carolina on relation of the corporation commission in the superior court of Wake county or of the county in which the violation of this article occurred; and it shall be the duty of the said corporation commission to bring such suits upon satisfactory information lodged with it; but no such suit shall be brought after the expiration of one year from the date of such violation; and it shall be the duty of the said corporation commission to lodge with the proper solicitors information of any such violations as may come to its knowledge. In all prosecutions under this article the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: Provided, that the provisions of this article shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time the said employee left a terminal, and which could not have been foreseen: Provided further, that the provisions of this article shall not apply to the crews of wrecking or relief trains: Provided further, this article shall not be construed to impose a penalty upon any common carrier for any act done in violation of the act of congress, ratified March the fourth, one thousand nine hundred and seven, and entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," or any acts amendatory thereof.

C. S., s. 6566; 1911, c. 112, s. 3.

190. Corporation commission's power. It shall be the duty of the corporation commission to execute and enforce the provisions of this article, and all powers granted to the corporation commission are extended to it in the execution thereof.

C. S., s. 6567; 1911, c. 112, s. 4.

ART. 5. EARNINGS OF EMPLOYEES IN INTERSTATE COMMERCE.**191. Collections out of state to avoid exemptions forbidden.**

No resident creditor or other holder of any book account, negotiable instrument, duebill or other monetary demand arising out of contract, due by or chargeable against any resident wage-earner or other salaried employee of any railway corporation or other corporation, firm, or individual engaged in interstate business shall send out of the state, assign, or transfer the same, for value or otherwise, with intent to thereby deprive such debtor of his personal earnings and property exempt by law from application to the payment of his debts under the laws of the state of North Carolina, by instituting or causing to be instituted thereon against such debtor, in any court outside of this state, in such creditor's own name or in the name of any other person, any action, suit, or proceeding for the attachment or garnishment of such debtor's earnings in the hands of his employer, when such creditor and debtor and the railway corporation or other corporation, firm, or individual owing the wages or salary intended to be reached are under the jurisdiction of the courts of this state.

C. S., s. 6568; 1909, c. 504, s. 1.

192. Resident not to abet collection out of state. No person residing or sojourning in this state shall counsel, aid, or abet any violation of the provisions of section 6568 (herein 191).

C. S., s. 6569; 1909, c. 504, s. 2.

193. Remedies for violation of two preceding sections; damages; indictment. Any person violating any provision of the last two sections shall be answerable in damages to any debtor from whom any book account, negotiable instrument, duebill, or other monetary demand arising out of contract shall be collected, or against whose earnings any warrant of attachment or notice of garnishment shall be issued, in violation of the provisions of section 6568 (herein 191), to the full amount of the debt thus collected, attached, or garnisheed, to be recovered by civil action in any court of competent jurisdiction in this state; and any person so offending shall likewise be guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars.

C. S., s. 6570; 1909, c. 504, s. 3.

194. Institution of foreign suit, etc., evidence of intent to violate. In any civil or criminal action instituted in any court of competent jurisdiction in this state for any violation of the provisions of

sections 6568 and 6569 (herein 191 and 192), proof of the institution or prosecution of any action, suit, or proceeding in violation of the provisions of section 6568 (herein 191), the issuance of service therein of any warrant, attachment, notice or garnishment or other like writ for the garnishment of earnings of the defendant therein, or of the payment by the garnishee therein of any final judgment rendered in any such action, suit, or proceeding shall be deemed prima facie evidence of the intent of the creditor or other holder of the debt sued upon to deprive such debtor of his personal earnings and property exempt from application to the payment of his debts under the laws of this state, in violation of the provisions of this article.

C. S., s. 6571; 1909, c. 504, s. 4.

195. Construction of article. No provision of this article shall be so construed as to deprive any person entitled to its benefits of any legal or equitable remedy already possessed under the laws of this state.

C. S., s. 6572; 1909, c. 504, s. 5.

CHAPTER III.

MONOPOLIES AND TRUSTS.

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196. Combinations in restraint of trade illegal. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the state of North Carolina is hereby declared to be illegal. Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy, shall be guilty of a misdemeanor, and upon conviction thereof such person shall be fined or imprisoned, or both, in the discretion of the court, whether such person entered into such contract individually or as an agent representing a corporation, and such corporation shall be fined in the discretion of the court not less than one thousand dollars.

C. S., s. 2559; 1913, c. 41, s. 1.

Monopolies § 29. A combination by dealers in a necessary of life to raise, by agreement, the price thereof is indictable at common law.—State v. Craft, 168 N. C. 208, 83 S. E. 772.

Monopolies § 29. To a conspiracy to raise the prices of necessities of life, it is no defense that a person, not one of the conspirators, sold the same commodity at as high a price as the conspirators had agreed on, or that one might think that the price agreed on was reasonable.—Ibid.

Monopolies § 31. On a trial for a conspiracy by milk dealers to raise the price, the testimony of a witness that he had heard defendants say, after the agreement to raise the price was signed, that they sold milk thereafter at the higher priced agreed on was admissible.—Ibid.

197. Any restraint in violation of common law included. Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of

the common law is hereby declared to be in violation of the preceding section of this chapter.

C. S., s. 2560; 1913, c. 41, s. 2.

198. Burden of proof as to reasonableness on defendant. All contracts, combinations in the form of trust, and conspiracies in restraint of trade or commerce prohibited in the two preceding sections of this chapter are hereby declared to be unreasonable and illegal, unless the persons entering into such contract, combination in the form of trust, or conspiracy in restraint of trade or commerce can show affirmatively upon an indictment or civil action for violation of the preceding sections of this chapter that such contract, combination in the form of trust, conspiracy in restraint of trade or commerce does not injure the business of any competitor, or prevent any one from becoming a competitor because his or its business will be unfairly injured by reason of such contract, combination in the form of trust, or conspiracy in restraint of trade or commerce.

C. S., s. 2561; 1913, c. 41, s. 3.

199. Contracts to be in writing. No contract or agreement hereafter made, limiting the rights of any person to do business anywhere in the state of North Carolina shall be enforceable unless such agreement is in writing duly signed by the party who agrees not to enter into any such business within such territory: Provided, nothing herein shall be construed to legalize any contract or agreement not to enter into business in the state of North Carolina, or any point in the state of North Carolina, which contract is now illegal, or which contract is made illegal by any other section of this chapter.

C. S., s. 2562; 1913, c. 41, s. 4.

200. Particular acts defined. In addition to the matters and things hereinbefore declared to be illegal, the following acts are declared to be unlawful, that is, for any person, firm, corporation, or association directly or indirectly to do or to have any contract, express or knowingly implied, to do any of the acts or things specified in any of the subsections of this section.

1. To agree or conspire with any other person, firm, corporation or association to put down or keep down the price of any article produced in this state by the labor of others, which article the person, firm, corporation or association intends, plans or desires to buy.

2. To make a sale of any goods, wares, merchandise, articles or things of value whatsoever in North Carolina, whether directly or indirectly, or through any agent or employee, upon the condition that the purchaser thereof shall not deal in the goods, wares, merchandise, articles or things of value of a competitor or rival in the business of the person, firm, corporation or association making such sales.

3. To willfully destroy or injure, or undertake to destroy or injure, the business of any opponent or business rival in the state of North Carolina with the purpose or intention of attempting to fix the price of anything of value when the competition is removed.

4. Who directly or indirectly buys or sells within the state, through himself or itself, or through any agent of any kind or as agent or principal, or together with or through any allied, subsidiary or dependent person, firm, corporation or association, any article or thing of value which is sold or bought in the state to injure or destroy or undertake to injure or destroy the business of any rival or opponent, by lowering the price of any article or thing of value sold, so low, or by raising the price of any article or thing of value bought, so high as to leave an unreasonable or inadequate profit for a time, with the purpose of increasing the profit on the business when such rival or opponent is driven out of business or his or its business is injured.

5. Who deals in any thing of value within the state of North Carolina, to give away or sell, at a place where there is competition, such thing of value at a price lower than is charged by such person, firm, corporation or association for the same thing at another place, where there is not good and sufficient reason, on account of transportation or the expense of doing business, for charging less at the one place than at the other, with the view of injuring the business of another.

6. Who is engaged in buying or selling any thing of value in North Carolina, to make or have any agreement or understanding, express or implied, with any other person, firm, corporation or association, not to buy or sell such things of value within certain territorial limits within the state, with intention of preventing competition in selling or to fix the price or prevent competition in buying of such things of value within these limits: Provided, nothing herein shall be construed to prevent an agent from representing more than one principal. But nothing in this proviso shall be construed to authorize two or more principals to employ a common agent for the purpose of suppressing competition or

lowering prices: Provided further, that nothing herein shall be construed to prevent a person, firm or corporation from selling his or its business and good will to a competitor, and agreeing in writing not to enter the business in competition with the purchaser in a limited territory, as is now allowed under the common law: Provided, such agreement shall not violate the principles of the common law against trusts and shall not violate the provisions of this chapter.

C. S., s. 2563; 1913, c. 41, s. 5.

Contracts § 116. A contract between brothers who together ginned at least 80 per cent of the cotton ginned in chief town of great cotton producing country, whereby one sold to the other cotton gin, and agreed not to gin cotton on the south side of a certain creek, in consideration of the other agreeing not to gin cotton on the north side of such creek, where contract did not provide for sale of the good will of gin plant, was a division of the territory for the purpose of eliminating competition, and hence not enforceable, being in restraint of trade.—*Shute v. Shute*, 176 N. C. 462, 97 S. E. 392.

Contracts § 117. In determining whether contract for sale of a business is illegal as in restraint of trade, the contract must be considered as to its reasonableness in duration of time, or extent of territory, largely in connection with the nature of the business.—*Ibid*.

Contracts § 117. Agreement of defendant upon sale of his fish business not to engage in similar business for ten years within 100 miles held not void as an unreasonable restraint of trade.—*Morehead City Sea Food Co. v. Way*, 169 N. C. 679, 86 S. E. 603.

Contracts § 117. Contracts in partial restraint of trade will be upheld, if founded upon valuable consideration, reasonably necessary to protect the interests of the parties, and not prejudicial to the public interests.—*Mar-Hof Co. v. Rosenbacher*, 176 N. C. 330, 97 S. E. 169.

Monopolies § 17. When defendant bought large quantities of goods, and spent a large sum of money in advertising them, contract giving defendant exclusive sale of goods in city for two years was not prohibited.—*Ibid*.

Monopolies § 17. It is only contracts not reasonable that are prohibited. *Ibid*.

Contracts § 117. Contracts in restraint of trade are valid when the restraint is only partial and reasonable, affording fair protection and not interfering with public interests.—*Bradshaw v. Millikin*, 173 N. C. 432, 92 S. E. 161.

201. Violation a misdemeanor; punishment. Any corporation, either as agent or principal, violating any of the provisions of preceding section shall be guilty of a misdemeanor, and such corporation shall upon conviction be fined not less than one thousand dollars for each and every offense, and any person, whether acting for himself or as officer of any corporation or as agent of any corporation or person violating any of the provisions of this chapter

shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

C. S., s. 2564; 1913, c. 41, s. 5.

202. Persons encouraging violation guilty. Any person, being either within or without the state, who encourages or willfully allows or permits any agent or associates in business in this state to violate any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in the preceding section.

C. S., s. 2565; 1913, c. 41, s. 6.

203. Continuous violations separate offenses. When the things prohibited in this chapter are continuous, then in such event, after the first violation of any of the provisions hereof, each week that the violation of such provision shall continue shall be a separate offense.

C. S., s. 2566; 1913, c. 41, s. 7.

204. Duty of attorney-general to investigate. The attorney-general of the state of North Carolina shall have power, and it shall be his duty, to investigate, from time to time, the affairs of all corporations doing business in this state, which are or may be embraced within the meaning of the statutes of this state defining and denouncing trusts and combinations against trade and commerce, or which he shall be of opinion are so embraced, and all other corporations in North Carolina doing business in violation of law; and all other corporations of every character engaged in this state in the business of transporting property or passengers, or transmitting messages, and all other public-service corporations of any kind or nature whatever which are doing business in the state for hire. Such investigation shall be with a view of ascertaining whether the law or any rule of the North Carolina corporation commission is being or has been violated by any such corporation, officers or agents or employees thereof, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to prosecute any such corporation, its agents, officers and employees for crime, or prosecute civil actions against them if he discovers they are liable and should be prosecuted.

C. S., s. 2567; 1913 c. 41, s. 8.

205. Power to compel examination. In performing the duty required in the preceding section, the attorney-general shall have power, at any and all times, to require the officers, agents or em-

ployees of any such corporation, and all other persons having knowledge with respect to the matters and affairs of such corporations, to submit themselves to examination by him, and produce for his inspection any of the books and papers of any such corporations, or which are in any way connected with the business thereof, and the attorney-general is hereby given the right to administer oath to any person whom he may desire to examine. He shall also, if it may become necessary, have a right to apply to any judge of the supreme or superior court, after five days notice of such application, for an order on any such person or corporation he may desire to examine to appear and subject himself or itself to such examination, and disobedience of such order shall constitute contempt, and shall be punishable as in other cases of disobedience of a proper order of such judge.

C. S., s. 2568; 1913, c. 41, s. 9.

206. Person examined exempt from prosecution. No person examined, as provided in the preceding section, shall be subject to indictment, prosecution, punishment or penalty by reason or on account of anything disclosed by him upon such examination, and full immunity from prosecution and punishment by reason or on account of anything so disclosed is hereby extended to all persons so examined.

C. S., s. 2569; 1913, c. 41, s. 12.

207. Refusal to furnish information; false swearing. Any corporation unlawfully refusing or willfully neglecting to furnish the information required by this chapter, when it is demanded as herein provided, shall be guilty of a misdemeanor and fined not less than one thousand dollars: Provided, that if any corporation shall in writing notify the attorney-general that it objects to the time or place designated by him for the examination or inspection provided for in this chapter, it shall be his duty to apply to a judge of the supreme or superior court, who shall fix an appropriate time and place for such examination or inspection, and such corporation shall, in such event, be guilty under this section only in the event of its failure, refusal or neglect to appear at the time and place so fixed by the judge and furnish the information required by this chapter. False swearing by any person examined under the provisions of this chapter shall constitute perjury, and the person guilty of it shall be punishable as in other cases of perjury.

C. S., s. 2570; 1913, c. 41, s. 10.

208. Criminal prosecution; solicitors to assist; expenses. The attorney-general in carrying out the provisions of this chapter shall have a right to send bills of indictment before any grand jury in any county in which it is alleged this chapter has been violated or in any adjoining county, and may take charge of and prosecute all cases coming within the purview of this chapter, and shall have the power to call to his assistance in the performance of any of these duties of his office which he may assign to them any of the solicitors in the state, who shall, upon being required to do so by the attorney-general, send bills of indictment and assist him in the performance of the duties of his office: Provided, that the state shall pay the actual and necessary expenses of the solicitor incurred while performing such duties and not over one hundred dollars as an extra fee when the expense account is approved by the attorney-general and governor and duly audited, and the amount of the fee is fixed by them.

The necessary expenses incident to carrying out the provisions of this chapter shall, when approved by the governor and audited, be paid out of any money in the state treasury not otherwise appropriated.

C. S., s. 2571; 1913, c. 41, s. 13.

209. Remedy by civil action. If it shall become necessary to do so, the attorney-general may prosecute civil actions in the name of the state on relation of the attorney-general to obtain a mandatory order to carry out the provisions of this chapter, and the venue shall be in any county as selected by the attorney-general.

C. S., s. 2572; 1913, c. 41, s. 11.

210. In what name civil action prosecuted. It shall be the duty of the attorney-general, upon his ascertaining that the laws have been violated by any trust or public-service corporation, so as to render it liable to prosecution in a civil action, to prosecute such action in the name of the state, or any officer or department thereof, as provided by law, or in the name of the state on relation of the attorney-general, and to prosecute all officers or agents or employees of such corporations, whenever in his opinion the interests of the public require it.

C. S., s. 2573; 1913, c. 41, s. 12.

211. Civil action by person injured; treble damages. If the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this chapter, such person, firm or corporation so injured shall

have a right of action on account of such injury done, and if damages are assessed by a jury in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict.

C. S., s. 2574; 1913, c. 41, s. 14.

Injunction § 239. On defendant's motion for judgment on injunction bond, defendant cannot recover an amount in excess of the penalty of the bond, even though he is entitled to punitive damages for treble the amount of actual damages.—Shute v. Shute, 180 N. C. 386, 104 S. E. 764.

CHAPTER IV.

BANKS.

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ART. 1. DEFINITIONS.

212. The following definitions shall be applied to the terms used in this act:

The term "bank" when used in this act shall be construed to mean any corporation, partnership, firm, or individual receiving, soliciting, or accepting money or its equivalent on deposit as a business: Provided, however, this definition shall not be construed to include building and loan associations, Morris plan companies, industrial banks or trust companies not receiving money on deposit.

The term "surplus" means a fund created pursuant to the provisions of this act by a bank from its net earnings or undivided profits which, to the amount specified and any additions thereto set apart and designated as such, is not available for the payment of dividends, and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

Banks and Banking § 41. The primary purpose of a bank surplus is the accumulation of a sum against which bad debts may be charged, so that at all times the capital may be kept unimpaired. Pullen v. Corporation Commission, 152 N. C. 548, 68 S. E. 155.

The term "undivided profits" means the credit balance of the profit and loss account of any bank.

The term "net earnings" means the excess of the gross earnings of any bank over expenses and losses chargeable against such earnings during any dividend period.

The term "time deposits" means all deposits, the payment of which cannot be legally required within thirty days.

The term "demand deposits" means all deposits, the payment of which can be legally required within thirty days.

The term "insolvency" means: (a) when a bank cannot meet its deposit liabilities as they become due in the regular course of business; (b) when the actual cash market value of its assets is insufficient to pay its liabilities to depositors and other creditors;

(c) when its reserve shall fall under the amount required by this act, and it shall fail to make good such reserve within thirty days after being required to do so by the Corporation Commission.

1921, c. 4, s. 1.

ART. 2. CREATION.

213. How incorporated. Any number of persons, not less than five, who may be desirous of forming a company and engaging in the business of establishing, maintaining, and operating banks of discount and deposit to be known as commercial banks, or engaging in the business of establishing, maintaining, and operating offices of loan and deposits to be known as savings banks, or of establishing, maintaining, and operating banks having departments for both classes of business, or operating banks engaged in doing a trust, fiduciary, and surety business, shall be incorporated in the manner following and in no other way; that is to say, such persons shall, by a certificate of incorporation under their hands and seals set forth:

1. The name of the corporation. No name shall be used already in use by another existing corporation organized under the laws of this state or of the Congress, or so nearly similar thereto as to lead to uncertainty or confusion.

2. The location of its principal office in this state.

3. The nature of its business, whether that of a commercial bank, savings bank, trust company, or a combination of two or more or all of such classes of business.

4. The amount of its authorized capital stock which shall be divided into shares of fifty or one hundred dollars each; the amount of capital stock with which it will commence business, which shall not be less than fifteen thousand dollars in cities or towns or three thousand population or less; not less than thirty thousand dollars in cities and towns whose population exceeds three thousand, but does not exceed ten thousand; nor less than fifty thousand dollars in cities and towns whose population exceeds ten thousand but does not exceed twenty-five thousand; nor less than one hundred thousand dollars in cities and towns having a population of more than twenty-five thousand; the population to be ascertained by the last preceding National census: Provided, that subsection four of section two of this act shall not apply to banks organized and doing business prior to its adoption.

5. The names and postoffice addresses of subscribers for stock, and the number of shares subscribed by each; the aggregate of

such subscriptions shall be the amount of the capital with which the company will commence business.

6. Period, if any, limited for the duration of the company.

1921, c. 4, s. 2.

214. Certificate of incorporation; how signed, proved and filed. The certificate of incorporation shall be signed by the original incorporators, or a majority of them, and shall be proved or acknowledged before an officer duly authorized under the laws of this state to take proof or acknowledgment of deeds, and shall be filed in the office of the secretary of state. The secretary of state shall forthwith transmit to the corporation commission a copy of said certificate of incorporation, and shall not issue or record the same until duly authorized so to do by the corporation commission as hereinafter provided.

1921, c. 4, s. 3.

215. Preliminary examination. Upon receipt of a copy of the certificate of incorporation of the proposed bank, the corporation commission shall at once examine into all the facts connected with the formation of such proposed corporation, including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business of banking, the corporation commission shall so certify to the secretary of state, who shall thereupon issue and record such certificate of incorporation. But the corporation commission may refuse to so certify to the secretary of state, if upon examination and investigation it has reason to believe that the proposed corporation is formed for any other than legitimate banking business, or that the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation are not such as to command the confidence of the community in which said bank is proposed to be located; or that the public convenience and advantage will not be promoted by its establishment, or that the name of the proposed corporation is likely to mislead the public as to its character or its purpose; or if the proposed name is the same as one already adopted, or appropriated by an existing bank in this state, or so similar thereto as to be likely to mislead the public.

1921, c. 4, s. 4; Ex. Session 1921, c. 56, s. 1.

216. Certificate of incorporation, when certified. Upon receipt of such certificate from the corporation commission, the secretary of state shall, if said certificate of incorporation be in accordance with law, cause the same to be recorded in his office

in a book to be kept for that purpose, and known as the Corporation Book, and he shall, upon the payment of the organization tax and fees, certify under his official seal two copies of the said certificate of incorporation and probates, one of which shall forthwith be recorded in the office of the clerk of the superior court of the county where the principal office of said corporation in this state shall or is to be located, in a book to be known as the Record of Incorporations, and the other certified copy shall be filed in the office of the corporation commission, and thereupon the said persons shall be a body politic and corporate under the name stated in such certificate. The said certificate of incorporation, or a copy thereof, duly certified by the secretary of state or the clerk of the superior court of the county in which the same is recorded, or by the clerk of the corporation commission, under their respective seals, shall be evidence in all courts and places, and shall, in all judicial proceedings, be deemed prima facie evidence of the complete organization and incorporation of the company purporting thereby to have been established. The charter of any bank which fails to complete its organization and open for business to the public within six months after the date of filing its certificate of incorporation with the secretary of state shall be void: Provided, however, the corporation commission may for cause extend the limitation herein imposed.

1921, c. 4, s. 5.

217. Payment of capital stock. At least fifty per cent of the capital stock of every bank shall be paid in cash before it shall be authorized to commence business, and the remainder of the capital stock of such bank shall be paid in monthly installments of at least ten per cent in cash of the whole capital, payable at the end of each succeeding month from the time it shall be authorized by the corporation commission to commence business, and the payment of each installment shall be certified to the corporation commission, under oath, by the president, or the cashier of the bank: Provided, that the stock sold by any bank in process of organization, or for an increase of the capital stock, shall be accounted for to the bank in the full amount paid for the same. No commission or fee shall be paid to any person, association, or corporation for selling such stock. The corporation commission shall refuse authority to commence business to any bank if commissions or fees have been paid, or have been contracted to be paid by it, or by any one in its behalf, to any person, association,

or corporation for securing subscriptions for or selling stock in such bank.

1921, c. 4, s. 6.

218. Statement filed before beginning business. Before such company shall begin the business of banking, banking and trust, fiduciary, or surety business, there shall be filed with the corporation commission a statement under oath by the president or cashier, containing the names of all the directors and officers, with the date of their election or appointment, term of office, residence, and postoffice address of each, the amount of capital stock of which each is the owner in good faith and the amount of money paid in on account of the capital stock. Nothing shall be received in payment of capital stock but money.

1921, c. 4, s. 7.

219. Authorized to begin business. Upon filing of such statement, the corporation commission shall examine into its affairs, ascertain especially the amount of money paid in on account of its capital. The name and place of residence of each director, the amount of capital stock of which each is the owner in good faith, and whether such corporation has complied with all the provisions of law required to entitle it to engage in business. If upon such examination it appears to the corporation commission that it is lawfully entitled to commence the business of banking, banking and trust, fiduciary, or surety business, it shall give to such corporation a certificate signed by the chairman of the corporation commission, attested by the secretary of the commission, that such corporation has complied with all the provisions of the law required to be complied with, before commencing the business of banking, and that such corporation is authorized to commence business.

1921, c. 4, s. 8.

220. Transactions preliminary to beginning business. No such corporations shall transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized to do so by the corporation commission.

1921, c. 4, s. 9.

Banks & Banking § 42. Failure of a bank to organize within two years after it is chartered can only be raised by the state in a direct proceeding. *Boyd v. Redd*, 120 N. C. 335, 27 S. E. 35.

221. Increase of capital stock. A corporation doing business

under the provisions of this act may increase its capital stock as provided by law for other corporations.

1921, c. 4, s. 10.

222. Decrease of capital stock. A corporation doing business under the provisions of which act may reduce its capital stock in the manner provided for other corporations: Provided, that no bank shall reduce its capital stock to an amount less than the minimum required by law. Such reduction shall not be valid or warrant the cancellation of stock certificates until it has been approved by the corporation commission. Such approval shall not be given except upon a finding by the corporation commission that the security of existing creditors of the corporation will not be impaired.

1921, c. 4, s. 11.

223. Consolidation of banks. A bank may consolidate with or transfer its assets and liabilities to another bank. Before such consolidation or transfer shall become effective, each bank concerned in such consolidation or transfer shall file, or cause to be filed, with the corporation commission, certified copies of all proceedings had by its directors and stockholders, which said stockholders' proceedings shall set forth that holders of at least two-thirds of the stock voted in the affirmative on the proposition of consolidation or transfer. Such stockholders' proceedings shall also contain a complete copy of the agreement made and entered into between said banks, with reference to such consolidation or transfer. Upon the filing of such stockholders' and directors' proceedings as aforesaid, the corporation commission shall cause to be made an examination of each bank to determine whether the interest of the depositors, creditors, and stockholders of each bank are protected, and that such consolidation or transfer is made for legitimate purposes, and its consent to or rejection of such consolidation or transfer shall be based upon such examination. No such consolidation or transfer shall be made without the consent of the corporation commission. The expense of such examination shall be paid by such banks. Notice of such consolidation or transfer shall be published for four weeks before or after the same is to become effective, at the discretion of the corporation commission, in a newspaper published in a city, town, or county in which each of said banks is located, and a certified copy thereof shall be filed with the corporation commission. In case of either transfer or consolidation the rights of creditors shall be preserved

unimpaired, and the respective companies deemed to be in existence to preserve such rights for a period of three years.

1921, c. 4, s. 12.

224. Consolidated banks deemed one bank. In case of consolidation when the agreement of consolidation is made, and a duly certified copy thereof is filed with the secretary of state, together with a certified copy of the approval of the corporation commission to such consolidation, the banks, parties thereto, shall be held to be one company, possessed of the rights, privileges, powers, and franchises of the several companies, but subject to all the provisions of law under which it is created. The directors and other officers named in the agreement of consolidation shall serve until the first annual meeting for election of officers and directors, the date for which shall be named in the agreement. On filing such agreement, all and singular, the property and rights of every kind of the several companies shall thereby be transferred and vested in such new company, and be as fully its property as they were of the companies parties to the agreement.

1921, c. 4, s. 13.

225. Reorganization. Whenever any bank under the laws of this state or of the United States is authorized to dissolve, and shall have taken the necessary steps to effect dissolution, it shall be lawful for a majority of the directors of such bank, upon authority in writing of the owners of two-thirds of its capital stock, with the approval of the corporation commission, to execute articles of incorporation as provided in this act, which articles, in addition to the requirements of law, shall further set forth the authority derived from the stockholders of such national bank or state bank, and upon filing the same as hereinbefore provided for the organization of banks, the same shall become a bank under the laws of this state, and thereupon all assets, real and personal, of the dissolved national or state bank shall by operation of law be vested in and become the property of such state bank, subject to all liabilities of such national or state bank not liquidated under the laws of the United States or this state before such reorganization.

1921, c. 4, s. 14.

ART. 3. DISSOLUTION AND LIQUIDATION.

226. Voluntary liquidation. A bank may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this state by the affirmative vote of its

stockholders owning two-thirds of its stock, such vote to be taken at a meeting of the stockholders duly called by resolution of the board of directors, written notice of which, stating the purpose of the meeting, shall be mailed to each stockholder, or in case of his death, to his legal representative or heirs at law, addressed to his last known residence ten days previous to the date of said meeting. Whenever stockholders shall by such vote at a meeting regularly called for the purpose, notice of which shall be given as herein provided, decide to liquidate such bank, a certified copy of all proceedings of the meeting at which said action shall have been taken, verified by the oath of the president and cashier, shall be transmitted to the corporation commission for its approval. If the corporation commission shall approve the same, it shall issue to the said bank, under its seal, a permit for such purpose. No such permit shall be issued by the corporation commission until said commission shall be satisfied that provision has been made by such bank to satisfy and pay off all depositors and all creditors of such bank. If not so satisfied, the corporation commission shall refuse to issue a permit, and shall be authorized to take possession of said bank and its assets and business, and hold the same and liquidate said bank in the manner provided in this act. When the corporation commission shall approve the voluntary liquidation of a bank, the directors of said bank shall cause to be published in a newspaper in the city, town, or county in which such bank is located, a notice that the bank is closing up its affairs and going into liquidation, and notify its depositors and creditors to present their claims for payment. When any bank shall be in process of voluntary liquidation, it shall be subject to examination by the corporation commission, and shall furnish such reports from time to time as may be called for by the corporation commission. All unclaimed deposits and dividends remaining in the hands of such bank shall be subject to the provisions of this act as hereinafter provided.

1921, c. 4, s. 15.

227. Corporation commission may take charge, when. The corporation commission may forthwith take possession of the business and property of any bank to which this act is applicable whenever it shall appear that such bank:

1. Has violated its charter or any laws applicable thereto;
2. Is conducting its business in an unauthorized or unsafe manner;
3. Is in an unsafe or unsound condition to transact its business;
4. Has an impairment of its capital stock;

5. Has refused to pay its depositors in accordance with the terms on which such deposits were received;

6. Has become otherwise insolvent;

7. Has neglected or refused to comply with the terms of a duly issued lawful order of the corporation commission;

8. Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination to a duly appointed or authorized examiner of the corporation commission;

9. Its officers have refused to be examined upon oath regarding its affairs.

Such banks may, with the consent of the corporation commission, resume business upon such terms and conditions as may be approved by it.

1921, c. 4, s. 16.

228. Involuntary liquidation, receivership. If any bank shall neglect or refuse for a period of sixty days to make a report to the corporation commission, as it may demand, or shall fail, neglect, or refuse to comply with the provisions of the section next preceding this one, or if at any time the corporation commission shall find a bank, or other institution subject to its supervision in an insolvent condition, or if such institution shall neglect or refuse to correct any irregularities through violation of this act, which may be called to the attention of the president, cashier, or board of directors, the corporation commission shall have authority to take charge of such institution, and if upon investigation it appears to be to the interest of creditors, depositors, and stockholders that a receiver should be appointed, it may apply to the court for the appointment of a competent person as receiver. Any receiver so appointed, before entering upon his duties, shall execute a good and sufficient bond in some bonding company authorized to do business in North Carolina, which bond shall be approved by the court. Such receiver, under the direction of the court, shall take possession of the books, moneys, records, and assets of every description of such institution, and collect all debts, dues and claims belonging to it, and upon order of the court may sell or compound all bad or doubtful debts, and on like orders may sell all real and personal properties belonging to such bank and upon such terms, as the court may approve or direct, and, if necessary to pay its debts, the receiver may enforce the individual liabilities of its stockholders. A suit for such purpose may be instituted against resident stockholders in the name of such receiver in the superior court of the county in which its banking office or home is located, and as to nonresident stockholders,

the suit may be brought in any county of any state, where such stockholder resides, or where service of a process may be had on such stockholder. All expenses on account of any receivership and all wages or salaries due officers or employees shall be paid out of the assets of such bank before distribution of the proceeds thereof; and such receiver may, on order of the court, make a ratable dividend of the money in his hands on all such claims as may have been proved to his satisfaction or adjudication in a court of competent jurisdiction, and as the proceeds of the assets of such bank are paid to the receiver, he shall on like orders make any further dividends, upon all claims previously proved or adjudicated, and the remainder of the proceeds, if any, shall be paid to the stockholders of such bank, or their legal representatives, in proportion to the stock respectively held by them. Any bank which is being operated or liquidated under any receivership herein provided shall remain subject to examination and supervision by the corporation commission.

1921, c. 4, s. 17.

Banks & Banking § 77. An application for the appointment of a receiver can be made to the resident judge, or the judge holding the courts by assignment or by exchange, of the judicial district in which the bank is situated. *Worth v. Piedmont Bank of Morganton*, 121 N. C. 343, 28 S. E. 488.

Banks & Banking § 77. Under former statute giving State Treasurer the exclusive right to institute proceedings for a receiver, any creditor still had the right to begin an action for that purpose in the superior court of the county where the bank is situated.—*Ibid*.

Banks & Banking § 77. The Court which first takes cognizance of the controversy is entitled to retain jurisdiction until the end of the litigation, to the exclusion of all interference by other courts of concurrent jurisdiction; and where permanent receivers were appointed in separate proceedings by different courts having equal authority to appoint, the test of jurisdiction is not the first issuing of the summons, nor the first preparation and verification of the papers, nor which receiver first took possession, but which court was first "seized of jurisdiction," by making an order upon legal proceedings exhibited before it, as by the appointment of a temporary receiver.—*Ibid*.

Banks & Banking § 77. Where a receiver of a bank has been appointed at the instance of creditors, an action cannot be maintained against him to recover a deposit; the remedy being by a petition in the receivership. *Crutchfield v. Hunter*, 138 N. C. 54, 50 S. E. 557.

Banks & Banking § 77. Where a resident creditor of an insolvent bank brings suit in another state, which hinders the collection of the assets of the bank by the receiver, the receiver is entitled to enjoin the creditor for the prosecution of such suit; and it is no defense that such receiver had an adequate remedy at law. *Davis v. Butters Lumber Co.*, 132 N. C. 233, 43 S. E. 650.

Banks & Banking § 47. The double liability imposed upon stockholders in banks may be enforced by the receiver of the bank for the benefit of

creditors. *Smathers v. Western Carolina Bank*, 135 N. C. 410, 47 S. E. 893.

Banks & Banking § 135. Upon a bank closing its doors, all claims against and in favor of it become due at once. *Davis v. Industrial Mfg. Co.*, 114 N. C. 321, 19 S. E. 371.

229. Dividends and unclaimed deposits, disposition of. Dividends and unclaimed deposits remaining in the hands of the receiver for a period of six months after the order for final distribution by the court shall be deposited with the state treasurer, who shall hold such funds as custodian without the payment of interest, subject to the order of the court appointing the receiver, and without the necessity of appropriation by the general assembly. Any person entitled to all or any part of such unclaimed dividends or deposits may apply to the court of the county in which insolvent bank was located, or had its principal office, for an order directing the state treasurer to pay such dividends or unclaimed deposits. Upon satisfactory proof of such claim, it shall be the duty of the court to issue such an order upon the state treasurer, directing the payment of said dividend or unclaimed deposit, and the state treasurer is by this act authorized, empowered and directed to pay out such moneys, without interest, as stated in the order of the court herein authorized to issue such orders.

1921, c. 4, s. 18.

230. Receivers, powers and duties of. That article ten of the Consolidated Statutes, relating to receivers, when not inconsistent with the provisions of this act, shall apply to receivers appointed hereunder.

1921, c. 4, s. 19.

231. Books, records, etc., disposition of. All books, papers, and records of a bank which has been finally liquidated shall be deposited by the receiver in the office of the clerk of the superior court for the county in which the office of such bank is located or in such other place as in his judgment will provide for the proper safe-keeping and protection of such books, papers, and records. The books, papers, and records herein referred to shall be held subject to the orders of the corporation commission and the clerk of the superior court for the county in which such bank was located.

1921, c. 4, s. 20.

ART. 4. STOCKHOLDERS.

232. Stockholders, individual liability of. The stockholders

of every bank organized under the laws of North Carolina, whether under the general law or by special act, shall be individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation, to the extent of the amount of their stocks therein at par value hereof, in addition to the amount invested in such shares. The term stockholders, when used in this act, shall apply not only to such persons as appear by the books of the corporation to be stockholders, but also to every owner of stock, legal or equitable, although the same may be on such books in the name of another person; but shall not apply to a person who may hold the stock as collateral for the payment of a debt.

1921, c. 4, s. 21.

Banks & Banking § 47. The individual liability, created by statute, of the shareholders in a bank, beyond the amount of the stock for which they have subscribed, is an asset of the corporation available only to the creditors and depositors of the bank. *Hill v. Smathers*, 173 N. C. 642, 92 S. E. 607.

Banks & Banking § 47. This provision of law creates an additional liability upon the stockholders as a matter of statute, and not by contract; and when a woman owns such stock in her own name and right, the liability being statutory and for the benefit of the bank's creditors and not arising by contract, she is equally liable under such law. *Smathers v. Western Carolina Bank*, 155 N. C. 283, 71 S. E. 345.

Banks & Banking § 47. A receiver for an insolvent bank is the proper party to bring an action against the stockholders to enforce their double liability. *Smathers v. Western Carolina Bank*, 135 N. C. 410, 47 S. E. 893. Details of procedure for enforcing double liability of an insolvent bank.—*Ibid*.

233. Exemption from liability, repealing of. Any exemption from the individual liability imposed upon stockholders by the preceding section contained in the charter of any bank incorporated prior to the first day of January, one thousand nine hundred and five is repealed.

1921, c. 4, s. 22.

234. Executors, trustees, etc., not personally liable. Persons holding stock as executors, administrators, guardians, or trustees shall not personally be subject to any liabilities as stockholders, but the estate and funds in their hand shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust fund would be if living and competent to hold stock in his own name.

1921, c. 4, s. 23.

235. Transferor, not liable when. No person who has in good faith, and without intent to evade his liability as a stockholder,

transferred his stock on the books of the corporation to any person of full age, previous to any default in the payment of any debt or liability of the corporation, shall be subject to any personal liability on account of the nonpayment of such debt or liability of the corporation, but the transferee of any stock so transferred previous to any default shall be liable for any such debt or liability of the corporation to the extent of such stock, in the same manner, as if he had been such owner at the time the corporation contracted such debt or liability: Provided, that no transfer of the shares of stock of an insolvent state bank, made within sixty days prior to its suspension, shall operate to release or discharge the assignor thereof, but shall be prima facie evidence that such stockholder assigned the same with knowledge of the insolvency of such bank and with an intent to evade the liability thereon.

1921, c. 4. s. 24.

236. Stock sold if subscription unpaid. Whenever any stockholder, or his assignee, fails to pay any installment on the stock, when the same is required by law to be paid, the directors of the bank shall sell the stock of such delinquent stockholder at public or private sale, as they may deem best, having first given the delinquent stockholder twenty days notice, personally or by mail, at his last known address. If no party can be found who will pay for such stock the amount due thereon to the bank with any additional indebtedness of such stockholder to the bank, the amount previously paid shall be forfeited to the bank, and such stock shall be sold, as the directors may order, within thirty days of the time of such forfeiture, and if not sold, it shall be canceled and deducted from the capital stock of the bank.

Ex. Session 1921, c. 56, s. 3.

237. Impairment of capital; assessment upon stockholders. The corporation commission shall notify every bank whose capital shall have become impaired from losses or any other cause and the surplus and undivided profits of such bank are insufficient to make good such impairment, to make the impairment good within sixty days of such notice by an assessment upon the stockholders thereof, and it shall be the duty of the officers and directors of the bank receiving such notice to immediately call a special meeting of the stockholders for the purpose of making an assessment upon its stockholders sufficient to cover the impairment of the capital, payable in cash, at which meeting such assessment shall be made. Provided, that such bank may reduce its capital to the

extent of the impairment, as provided in chapter 4, section 11, laws 1921 (222). If any stockholder of such bank neglects or refuses to pay such assessment as herein provided, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder or stockholders to be sold at public auction, upon thirty days notice given by posting such notice of sale in the office of the bank and publishing such notice in a newspaper in the place where the bank is located, and if none, then in a newspaper circulating in the county in which the bank is located, to make good the deficiency, and the balance, if any, shall be returned to the delinquent shareholder or shareholders. If any such bank shall fail to cause to be paid in such deficiency in its capital stock for three months after receiving such notice from the corporation commission, the corporation commission may forthwith take possession of the property and business of such bank until its affairs be finally liquidated as provided by law. A sale of stock, as provided in this section, shall effect an absolute cancellation of the outstanding certificate, or certificates, evidencing the stock so sold, and make the certificate null and void, and a new certificate shall be issued by the bank to the purchaser of such stock.

Ex. Session 1921, c. 56, S. 3.

ART. 5. POWERS AND DUTIES.

238. General powers. In addition to the powers conferred by law upon private corporations, banks shall have the power:

1. The exercise by its board of directors, or duly authorized officers and agents, subject to law, all such powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness, by receiving deposits, by buying and selling exchange, coin, and bullion, by loaning money on personal security or real and personal property. Such corporations at the time of making loans or discount may take and receive interest or discounts in advance.

2. To adopt regulations for the government of the corporation not inconsistent with the constitution and laws of this state.

3. To purchase, hold, and convey real estate for the following purposes:

- (a) Such as shall be necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other apartments to rent as a source of income, which

investment shall not exceed fifty per cent of its paid-in capital stock and permanent surplus: Provided, that this provision shall not apply to any such investment made before the ninth day of March, one thousand nine hundred and twenty-one.

(b) Such as is mortgaged to it in good faith by way of security for loans made or moneys due to such bank.

(c) Such as has been purchased at sales upon foreclosures of mortgages owned by it, or on judgments or decrees obtained and rendered for debts due to it, or in settlements effecting security of such debts. All real property referred to in this subsection shall be sold by such bank within one year after it is acquired, unless, upon application by the board of directors, the corporation commission extends the time within which such sale shall be made. Any and all powers and privileges heretofore granted and given to any person, firm, or corporation doing a banking business in connection with a fiduciary and insurance business, or the right to deal to any extent in real estate, inconsistent with this act, are hereby repealed.

1921, c. 4, s. 26.

239. Investments, limitations of. The investment in any bonds or other interest bearing securities of any one firm, individual or corporation, unless it be the interest bearing obligations of the United States, State of North Carolina, city, town, township, county, school district, or other political subdivision of the State of North Carolina shall at no time be more than twenty-five per cent of the capital and permanent surplus of any bank having a paid-in capital of two hundred and fifty thousand dollars or less; not more than twenty per cent of the capital and permanent surplus of any bank having a paid-in capital of more than two hundred and fifty thousand dollars, but not more than five hundred thousand dollars; not more than fifteen per cent of the capital and permanent surplus of any bank having a paid-in capital of more than five hundred thousand dollars, but not more than seven hundred and fifty thousand dollars; and not more than ten per cent of the capital and permanent surplus of any bank having a paid-in capital of more than seven hundred and fifty thousand dollars: Provided, that nothing in this section shall prevent the investing by a bank of fifty per cent of its capital and permanent surplus in the stock or bonds of a corporation owning the land, building or buildings occupied by such bank as its banking home: Provided further, nothing in this section shall be construed to compel any bank to surrender or dispose of any invest-

ments in the stocks or bonds of a corporation owning the lands or buildings occupied by such bank as its banking home, provided such stocks or bonds were lawfully acquired prior to the ratification of this act.

1921, c. 4, s. 27.

240. Stocks, limitations on investment in. No bank shall make any investment in the capital stock of any other state or national bank: Provided, that nothing herein shall be construed to prevent the subscribing to or purchasing of the capital stock of banks organized under that act of Congress commonly known as the "Edge Act"; or central reserve banks, having a capital stock of more than one million dollars; by banks doing business under this act, upon such terms as may be agreed upon. To constitute a central reserve bank as contemplated by this act, at least fifty per cent of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under that act of Congress commonly known as the "Edge Act," shall at no time exceed ten per cent of the paid-in capital and permanent surplus of the bank making same. No bank shall invest more than fifty per cent of its permanent surplus in the stocks of other corporations, firms, partnerships, or companies, unless such stock is purchased to protect the bank from loss. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the same, and if not so disposed of they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which said stocks shall be disposed of or charged off the books of the bank may be extended by the corporation commission, if in its judgment it is for the best interest of the bank that such extension be granted.

1921, c. 4, s. 28.

241. Loans, limitations of. The total direct and indirect liabilities of any person, firm, or corporation, other than municipal corporations, for money borrowed, including in the liabilities of a firm the liabilities of the several members thereof, shall at no time exceed twenty-five per cent of the capital stock and permanent surplus of any bank having a paid-in capital of two hundred and fifty thousand dollars or less; not more than twenty per cent of the capital and permanent surplus of any bank having a paid-in capital of more than two hundred and fifty thousand dollars, but not more than five hundred thousand dollars; not more than fifteen

per cent of the capital and permanent surplus of any bank having a paid-in capital of more than five hundred thousand dollars, but not more than seven hundred and fifty thousand dollars; and not more than ten per cent of the capital and permanent surplus of any bank having a paid-in capital of more than seven hundred and fifty thousand dollars: Provided, however, that the discount of bills of exchange drawn in good faith against actually existing values, the discount of trade acceptances or other commercial paper actually owned by the person, firm or corporation negotiating the same, and the purchase of any notes secured by not less than a like face amount of bonds of the United States or State of North Carolina, or certificates of indebtedness of the United States, shall not be considered as money borrowed within the meaning of this section: Provided further, that the limitations upon loans herein imposed shall not apply to existing loans or extensions and renewals thereof, except as same may be made to apply by general or special regulations of the corporation commission.

1921, c. 4, s. 29.

242. Investment and loan limitation, suspension of. The board of directors on any bank may, by resolution duly passed at a meeting of the board, request the corporation commission to temporarily suspend the limitation on loans and investments as same may apply to any particular loan or investment, which said bank desires to make in excess of the provisions of sections twenty-seven, twenty-eight, and twenty-nine of this act. Upon receipt of a duly certified copy of such resolution, the corporation commission may, in its discretion, suspend the limitation on loans and investments in so far as it would apply to the loan or investment which such bank desires to make.

1921, c. 4, s. 30.

243. Reserve. Every bank shall at all times have on hand or on deposit with approved reserved depositories, instantly available funds in an amount equal to at least fifteen per cent of the aggregate amount of its demand deposits, and five per cent of the aggregate amount of its time deposits. But no reserve shall be required on deposits secured by a deposit of United States bonds or the bonds of the State of North Carolina. Any bank that is now or may hereafter become a member of the Federal Reserve Bank shall maintain the same reserve with respect to deposits as shall be required of other members of such Federal Reserve Bank.

1921, c. 4, s. 31.

244. Reserve shall consist of. Reserve shall consist of cash on hand and balances payable on demand, due from other approved solvent banks, which have been designated depositories as hereinafter provided in this act.

1921, c. 4, s. 32.

245. Forged check, payment of. No bank shall be liable to a depositor for payment by it of a forged check or other order to pay money unless within sixty days after the receipt of such voucher by the depositor he shall notify the bank that such check or order so paid is forged.

1921, c. 4, s. 33.

Banks & Banking § 140.—A bank is liable for paying a check drawn to the order of one whose name was signed to a forged trust deed upon the indorsement of the payee's name by a customer known to the bank, who was unauthorized to make such indorsement. *McKaughan v. Merchants' Bank & Trust Co.*, 182 N. C. 543, 109 S. E. 355.

Banks & Banking § 125. A bank, as between itself and the bona fide holder of a check, is bound to know the signature of its customers, and cannot recover from such holder money paid to him on the subsequent discovery that the drawer's name was forged; hence if a depositor presents a check which he holds in good faith, drawn on the bank by another depositor, and the check is credited to him in his account and charged to the drawer, that is in effect a payment which the bank cannot repudiate.—*Woodward v. Savings & Trust Co.*, 178 N. C. 184, 100 S. E. 304.

Banks & Banking § 148. A bank with which a person has a deposit assumes responsibility for the erroneous payment of any check not drawn or authorized by the depositor.—*Bank of Brunswick v. Thompson*, 174 N. C. 349, 93 S. E. 849.

Banks & Banking § 149. Plaintiff bank, paying forged check purporting to be signed by its depositor, cashed in good faith by defendant bank, held not entitled to recover amount from defendant bank, since it was bound to know the signature of its depositors.—*State Bank v. Cumberland Savings & Trust Co.*, 168 N. C. 605, 85 S. E. 5.

246. Minor, payment of deposit in the name of. That whenever any person who is a minor of the age of fifteen years and upwards shall make a deposit in any state or national bank in this state, the same shall be held for the exclusive benefit and right of such minor, free from the control of all persons whatsoever, and it shall be paid, together with the interest, if there be any interest thereon, to the person in whose name the deposit shall be made, and the receipt, check, or quittance of such minor to the said state or national bank shall be valid and sufficient release and discharge for such deposit, or any part thereof, to the bank in which said deposit was made.

1921, c. 4, s. 34.

247. Transactions not performed during banking hours. Nothing in any law of this state shall in any manner whatsoever

affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this state, because done or performed during any time other than regular banking hours: Provided, that nothing herein shall be construed to compel any bank in this state, which by law or custom is entitled to close at twelve noon on any Saturday, or for the whole or part day of any legal holiday, to keep open for the transaction of business, or to perform any of the acts or transactions aforesaid on any Saturday after such hour or on any legal holiday, except at its option.

1921, c. 4, s. 35.

248. Commercial and business paper defined. The term "commercial or business paper," as used in this act, is hereby defined to mean a promissory note, and the term "trade acceptance" to mean a draft or bill of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used or are to be used for such purposes, but such definition shall not include notes, drafts, or bills of exchange covering merely investments, or issued or drawn for the purpose of carrying on or trading in stocks, bonds, or other investment securities, except bonds and notes of the Government of the United States and State of North Carolina. Such notes, drafts, and bills of exchange shall have a maturity at the time of discount of not more than ninety days, except when drawn or issued for agricultural purposes, or based on livestock, when such maturities shall not exceed nine months from the date thereof.

1921, c. 4, s. 36.

249. Bank acceptances defined. Any bank doing business under this act may accept for payment at a future date, drafts or bills of exchange having not more than six months sight to run, drawn upon it by its customers under acceptance agreements, and which grow out of transactions involving the importation or exportation of goods; and issue letters of credit authorizing the holders thereof, to draw upon it or its correspondence, provided that there is a definite bona fide contract for the shipment of goods within a specified reasonable time, and the existence of such contract is certified in the acceptance agreement; or which grow out of transactions involving the domestic shipment of goods, provided that shipping documents, conveying or securing to the accepting bank title to readily marketable goods, are attached or

in the hands of an agent of the accepting bank, independent of the drawer, for his account, at the time of acceptance, or which are secured at the time of acceptance by warehouse receipts or other documents conveying or securing to the accepting bank title to readily marketable goods fully covered by insurance, the warehouse receipts or other documents to be those of a responsible warehouse, independent of the drawer, the acceptance to remain secured during the life of the acceptance unless suitable security of same character, or cash, be substituted: Provided, no bank shall accept drafts or bills of exchange under this section to an aggregate amount at any time more than equal to the sum of its capital and permanent surplus: Provided further, that no bank shall accept, whether in a foreign or domestic transaction, for any one person, firm, or corporation, to any amount at any time equal to more than twenty-five per cent of its capital and permanent surplus, unless the accepting bank is secured either by attached documents or those held by its account by its agent, independent of the drawer, or by some other actual security of the same character. Should the accepting bank purchase or discount its own acceptances, such acceptances will be considered as a direct loan to the drawer, and be subject to the limitation on loans hereinbefore provided. The corporation commission may issue such further regulations as to such acceptances as it may deem necessary in conformity with this act. As used herein, the word "goods" shall be construed to mean and include goods, wares, merchandise, or agricultural products, including livestock.

1921, c. 4, s. 37.

Banks & Banking § 98. An acceptance, which is an "inland bill of exchange," but which may be treated as bill or note at the holder's option, the drawer and drawee being the same person, is within the charter power of a bank dealing in bills, notes, or any and all negotiable or commercial papers. *Sherrill v. American Trust Co.*, 176 N. C. 591, 97 S. E. 471.

250. Nonpayment of check in error, liability for. No bank shall be liable to a depositor because of the nonpayment, through mistake or error, and without malice, of a check which should have been paid had the mistake or error of nonpayment not occurred, except for the actual damage by reason of such nonpayment that the depositor shall prove, and in such event the liability shall not exceed the amount of damage so proven.

1921, c. 4, s. 38.

Banks & Banking § 155. In an action against a bank upon which a check had been drawn, and to which it had been sent for collection before the drawer was discovered to be insolvent, plaintiff has the burden of proving that the check was received in sufficient time for it to have been paid out

of funds of the drawer on deposit. *Standard Trust Co. v. Commercial Nat. Bank*, 166-N. C. 112, 81 S. E. 1074.

Banks & Banking § 155. In an action against a bank upon which a check had been drawn, and to which it had been sent for payment before the drawer was discovered to be insolvent, or the bank had set off its own claim against the drawer's deposit, evidence held to raise a question for the jury as to the bank's implied acceptance of the check by reason of its failure to use due diligence in collection.—*Ibid*.

Banks & Banking § 148. A bank with which a person has a deposit assumes responsibility for the erroneous payment of any check not drawn or authorized by the depositor.—*Bank of Brunswick v. Thompson*, 174 N. C. 349, 93 S. E. 849.

251. Checks sent direct to bank on which drawn. Any bank receiving for collection or deposit any check, note, or other negotiable instrument drawn upon or payable at another bank, located in another town or city, whether within or without this state, may forward such instrument for collection, direct to the bank on which it is drawn, or at which it is payable, and such method of forwarding direct to the payer bank shall be deemed due diligence, and the failure of such payer bank, because of its insolvency or other default, to account for the proceeds thereof, shall not render the forwarding bank liable therefor: Provided, however, such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument.

1921, c. 4, s. 39.

Banks & Banking § 171. The above section changes the law as set out in *American Nat. Bank v. Savannah Trust Co.*, 172 N. C. 344, 90 S. E. 302.

252. Deposits in trust, payment of. Whenever any deposits shall be made in any bank or banking institution in this state by any person in trust for any other person who is a minor of the age of fifteen years and upward, and no other or further notice of the existence and terms of a legal and valid trust shall have been given to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom said deposit was made: Provided, that the amount of said deposit is not in excess of one hundred dollars.

1921, c. 4, s. 40.

253. Farm loan bonds, authorized investment in. Any bank or insurance company organized under the laws of this state, and any person acting as executor, administrator, guardian, or trustee, may invest in federal farm loan bonds issued by any federal farm loan bank or joint-stock land bank organized pursuant to an act entitled "an act of Congress to provide capital for agricultural

development, to create standard forms of investment based upon farm mortgages, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositories, and financial agents for the United States, and for other purposes," approved the seventeenth day of July, one thousand nine hundred and sixteen.

1921, c. 4, s. 41.

254. Federal reserve bank, authority to join. The words "Federal Reserve Act," as herein used, shall be held to mean and to include the act of Congress of the United States, approved December twenty-third, nineteen hundred and thirteen, as heretofore and hereafter amended. The words "Federal Reserve Board" shall be held to mean the federal reserve board created and described in the federal reserve act. The words "Federal Reserve Banks" shall be held to mean federal reserve banks created and organized under the authority of the federal reserve act. The words "member bank" shall be held to mean any national or state bank or bank and trust company which has become or which becomes a member of one of the federal reserve banks created by the federal reserve act.

(a) That any bank incorporated under the laws of this state shall have the power to subscribe to the capital stock and become a member of a federal reserve bank.

(b) That any bank incorporated under the laws of this state which is, or which may become, a member of the federal reserve bank is by this act vested with all powers conferred upon member banks of the federal reserve banks by terms of the federal reserve act as fully and completely as if such powers were specifically enumerated and described therein, and such powers shall be exercised subject to all restrictions and limitations imposed by the federal reserve act, or by regulations of the federal reserve board made pursuant thereto. The right, however, is expressly reserved to revoke or to amend the powers herein conferred.

(c) A compliance on the part of any such bank with the reserve requirements of the federal reserve act shall be held to be a full compliance with the provisions of the laws of this state, which require banks to maintain cash balances in their vaults or with other banks, and no such bank shall be required to carry or maintain reserve other than such as is required under the terms of the federal reserve act.

(d) Any such bank shall continue to be subject to the supervision and examination required by the laws of this state, except that the federal reserve board shall have the right, if it deems

necessary, to make examinations; and the authorities of this state having supervision over such banks may disclose to the federal reserve board, or to the examiners duly appointed by it, all information in reference to the affairs of any bank which has become, or desires to become, a member of a federal reserve bank.

1921, c. 4, s. 42.

255. Establishment of branches. Any bank doing business under this act may establish branches in the cities in which they are located, or elsewhere, after having first obtained the written approval of the corporation commission, which approval may be given or withheld by the corporation commission, in its discretion, and shall not be given until it shall have ascertained to its satisfaction that the public convenience and advantage will be promoted by the opening of such branch. Such branch banks shall be operated as branches of and under the name of the parent bank, and under the control and direction of the board of directors and executive officers of said parent bank. The board of directors of the parent bank shall elect a cashier and such other officers as may be required to properly conduct the business of such branch, and a board of managers or loan committee shall be responsible for the conduct and management of said branch, but not of the parent bank or of any branch save that of which they are officers, managers, or committee: Provided, that the corporation commission shall not authorize the establishment of any branch, the paid-in capital stock of whose parent bank is not sufficient in an amount to provide for the capital of at least fifteen thousand dollars for the parent bank, and at least fifteen thousand dollars for each branch which it is proposed to establish in cities or towns of three thousand population or less; nor less than thirty thousand dollars in cities and towns whose population exceeds three thousand, but does not exceed ten thousand; nor less than fifty thousand dollars in cities and towns whose population exceeds ten thousand, but does not exceed twenty-five thousand; nor less than one hundred thousand dollars in cities and towns whose population exceeds twenty-five thousand. All banks operating branches prior to the passage of this act shall, within a time limit to be prescribed by the corporation commission, cause said branch bank to conform to the provisions of this section.

1921, c. 4, s. 43; Ex. Session, 1921, c. 56, s. 2.

Banks & Banking § 26. Whether a banking company, chartered to do business in a certain place and without express authority to establish and conduct a branch at another place, can do so, is a matter for the state, through the attorney general, to have determined by an action to vacate its charter. *Morehead Banking Co. v. Tate*, 122 N. C. 313, 30 S. E. 341.

Banks & Banking § 80. Where authority is given by the legislature to establish branches, the relation between the parent bank and the branch bank was that of principal and agent. *Worth v. Bank of New Hanover*, 122 N. C. 397, 29 S. E. 775.

256. Certificate of deposit, unlawful issuing of. It shall be unlawful for any bank to issue any certificate of deposit or other negotiable instrument of its indebtedness to the holder thereof except for lawful money of the United States, checks, drafts, or bills of exchange which are the actual equivalent of such money; nor shall such moneys, checks, drafts, or bills of exchange be the proceeds of any note given in payment of the purchase price of any stock. Any officer or employee of any bank violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court.

1921, c. 4, s. 44.

257. Bank own stock, unlawful to loan on. It shall be unlawful for any bank to make any loan secured by the pledge of its own shares of stock, nor shall any bank be the holder as pledgee, or as purchaser, of any portion of its capital stock unless such stock is purchased or pledged to it to prevent loss upon a debt previously contracted in good faith.

1921, c. 4, s. 45.

Banks & Banking § 250. A stockholder in a national bank in the process of liquidation cannot set off his distributive share in the assets against his liabilities on his stock. *First Nat. Bank v. Riggins*, 124 N. C. 534, 32 S. E. 801.

Boyd v. Redd, 120 N. C. 335, 27 S. E. 35.

258. Deposits payable on demand. Any bank may receive deposits of funds subject to withdrawal or to be paid upon the checks of the depositor. All deposits in such banks shall be payable on demand, without notice, except when the contract of deposit shall otherwise provide.

1921, c. 4, s. 46.

Banks & Banking § 119. The relation of debtor and creditor subsists between a bank and its depositor. *Reid v. Charlotte Nat. Bank*, 159 N. C. 99, 74 S. E. 746.

Banks & Banking § 131. Where a wife directed her husband to deposit \$800 of her money in a bank, to be used in a mutual business venture, and the husband fraudulently deposited the money in his own name and subsequently withdrew it, and the bank made the payment notwithstanding notification by the wife that the money was hers and that attachment papers were being prepared to recover it, the bank was liable to the wife. *Miller v. Bank of Washington*, 176 N. C. 152, 96 S. E. 977.

Banks & Banking § 134. A bank may apply a deposit standing in the

name of plaintiff's wife against a debt due it from her husband, where the deposit was made in the wife's name to defraud creditors. *Moore v. Greenville Banking & Trust Co.*, 173 N. C. 180, 91 S. E. 793.

Banks & Banking § 134. A bank's right to apply a deposit in payment of a debt is referable to principles of equity, as well as statutory set-off provisions.—*Ibid.*

Banks & Banking § 154. Where in action against depositor on note he pleaded deposit as counter-claim, bank held to have burden of showing payment of the deposit on proper orders of the depositor. *Bank of Brunswick v. Thompson*, 174 N. C. 349, 93 S. E. 849.

Banks & Banking § 154. The burden is on a bank, sued for a deposit by the depositor or his representative, to show excuse for failure to pay over. *Churchwell v. Branch Banking & Trust Co.*, 181 N. C. 21, 105 S. E. 889.

Banks & Banking § 82. A bank depositor, on rumors of its insolvency, went to withdraw his deposits, but was informed by the vice president and director that the bank was perfectly solvent, and that "we have got all the money you want. You need never have any fears of this bank as long as I am in it." Such depositor, relying on such representations, permitted his deposits to remain. The bank was in fact insolvent when the representations were made. Held, that such vice president and director was personally liable to such depositor for the money lost by the failure of the bank. *Townsend v. Williams*, 117 N. C. 330, 23 S. E. 461.

Banks & Banking § 58. A single depositor may maintain in his own behalf alone an action against the directors of a bank for the loss of a deposit, caused by their fraud, neglect, and mismanagement. *Tate v. Bates*, 118 N. C. 287, 24 S. E. 482.

Banks & Banking § 58. An action can be brought by a depositor or other creditor of a bank, and even by a stockholder, against the president and directors for breach of duty, without having first applied to the corporation or its receiver to bring such action, and the request having been refused. *Solomon v. Bates*, 118 N. C. 311, 24 S. E. 478.

259. Deposits in savings banks. Any bank conducting a savings department may receive deposits on such terms as are authorized by its board of directors and agreed to by its depositors. The board of directors shall prescribe the terms upon which such deposits shall be received and paid out, and a passbook shall be issued to each depositor containing the rules and regulations adopted by the board of directors governing such deposits, in which shall be entered each deposit made, the interest allowed thereon, and each payment made to such depositor. By accepting such book the depositor assents and agrees to the rules and regulations therein contained.

1921, c. 4, s. 47.

260. Board of directors, banks controlled by. The corporate powers, business, and property of banks doing business under this act shall be exercised, conducted, and controlled by its board of directors, which shall meet at least quarterly. Such board shall consist of not less than five directors, to be chosen by the

stockholders, and shall hold office for one year, and until their successors are elected and qualified.

1921, c. 4, s. 48.

ART. 6. OFFICERS AND DIRECTORS.

261. Executive committee, directors shall appoint. The board of directors shall appoint an executive committee or committees, each of which shall be composed of at least three of its members with such duties and powers as are defined by the regulations or by laws, who shall serve until their successors are appointed. Such executive committee or committees shall meet as often as the board of directors may require, which shall not be less frequently than once each month, and approve or disapprove all loans and investments. All loans and investments shall be made under such rules and regulations as the board of directors may prescribe.

1921, c. 4, s. 49.

262. Minutes of directors and executive committee meetings. Minutes shall be kept of all meetings of the board of directors and of the executive committee or committees, and same shall be recorded in a book or books which shall be kept for that purpose: which book or books shall be kept on file in the bank. Such minutes shall show a record of the action taken by the board of directors and executive committee or committees, on all loans, discounts, and investments made, authorized or approved, and such further action as the board of directors and executive committee or committees shall make concerning the conduct, management, and welfare of the bank. The minutes of the executive committee or committees shall be submitted to the board of directors for approval at each meeting of the board.

1921, c. 4, s. 50.

263. Directors, qualifications of. Every director of a bank doing business under this act shall be the owner and holder of shares of stock in the bank having a par value of not less than five hundred dollars: Provided, such bank shall have a capital stock of more than fifteen thousand dollars, and not less than two hundred dollars if such bank shall have a capital stock of fifteen thousand dollars or less. And every such director shall hold such shares in his own name unpledged and unencumbered in any way. The office of any director at any time violating any of the provisions of this section shall immediately become vacant, and the remaining directors shall declare his office vacant and proceed to

fill such vacancy forthwith. Not less than three-fourths of the directors of every bank doing business under this act shall be residents of the state of North Carolina: Provided, that as to banks doing business before the ratification of this act the requirements as to amount of stock owned by a director shall not apply unless the corporation commission shall rule that such director is not bona fide discharging his duties.

1921, c. 4, s. 51.

264. Directors shall take oath. Every director shall, within thirty days after his election, take and subscribe, in duplicate, an oath that he will diligently and honestly perform his duties in such office; and that he is the owner in good faith of the shares of stock of the bank required to qualify him for such office, standing in his own name on its books, and one of such oaths shall forthwith be filed with the corporation commission, and the other shall be kept on file in the bank.

1921, c. 4, s. 52.

265. Directors, liability of. Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of such bank, any of the provisions of this act shall be held personally and individually liable for all damages which the bank, its stockholders or any other person shall have sustained in consequence of such violation.

1921, c. 4, s. 53.

Banks & Banking § 82. A bank depositor, on rumors of its insolvency, went to withdraw his deposits, but was informed by the vice president and director that the bank was perfectly solvent, and that "we have got all the money you want. You need never have any fears of this bank as long as I am in it." Such depositor, relying on such representations, permitted his deposits to remain. The bank was in fact insolvent when the representations were made. Held, that such vice president and director was personally liable to such depositor for the money lost by the failure of the bank. *Townsend v. Williams*, 117 N. C. 330, 23 S. E. 461.

Banks & Banking § 82. Bank directors, who, by false and fraudulent statement to the state treasurer as to the condition of the bank, in order to conceal its insolvency, induce him not only to make new deposits of the state's money, but also to permit a portion of the money deposited by his predecessor to remain, are liable to such treasurer for any loss, either of the old or new deposits.—*Tate v. Bates*, 118 N. C. 287, 24 S. E. 482.

Banks & Banking § 54. It is the duty of the directors to know the condition of their bank, and to prevent publication of false statements of its condition, and by no private arrangement could they be excused from giving proper attention to such duties because they are nonresidents of the town wherein their bank is located. *Houston v. Thornton*, 122 N. C. 365, 29 S. E. 827.

Banks & Banking § 54. Where it appears that the affairs of a bank were left in the management of officers thereof, who, by gross frauds ex-

tending through a period of several years, ruined the bank, and during which time false statements were published showing the bank to be in a good condition, the fact that the directors resided away from the town where the bank was located will not warrant the assumption that such directors could not, in the proper discharge of their duty, have ascertained that such statements were false.—*Ibid.*

Banks & Banking § 82. A complaint charging bank directors with fraud and deceit in making false statements of the bank's solvency need not allege that defendant knew or believed the bank to be insolvent, such knowledge being conclusively presumed.—*Tate v. Bates*, 118 N. C. 287, 24 S. E. 482.

Banks & Banking § 55. Where negligence of directors in permitting a false and fraudulent statement of the condition of a bank is the basis of an action against the directors, the plaintiff's right to recover should not be restricted to one instance of negligence, where there are many others in evidence.—*Houston v. Thornton*, 122 N. C. 365, 29 S. E. 827.

Banks & Banking § 112. Where a cashier of a bank discounts a note and converts parts of the proceeds to his own credit instead of the credit of the maker, the bank is liable. *Phillips v. Hensley*, 175 N. C. 23, 94 S. E. 673.

266. Directors, examining committee of. A committee of at least three directors or stockholders shall be appointed annually to examine, or to superintend the examination of the assets and the liabilities of the bank, and to report to the board of directors the result of such examination. The committee, with the approval of the board of directors, may provide for such examination by a certified public accountant or clearing-house examiner in any city where such examination is provided for by the rules of such clearing-house association. A copy of such report of examination, which is herein required to be made, attested, and verified under oath by the signature of at least three members of such committee, shall forthwith be filed with the corporation commission.

1921, c. 4, s. 54.

267. Depositories, designated by directors. By resolution of the board of directors, other banks organized under the laws of this state, or of another state, or of the National Banking Act of the United States, shall be designated as depositories or reserve banks in which a part of such bank's reserve shall be deposited, subject to payment on demand. A copy of such resolution shall, upon its adoption, be forthwith certified to the corporation commission and the depository so designated shall be subject to the approval of the corporation commission. For causes which it may deem adequate, the corporation commission shall have authority at any time to withdraw such approval.

1921, c. 4, s. 55.

268. Stockholders' book. The directors shall provide a book in which shall be kept the name and resident address of each

stockholder, the number of shares held by each, the time when such person became a stockholder, together with all transfer of stock, stating the time when made, the number of shares and by whom transferred, which book shall be subject to the inspection of the directors, officers, and stockholders of the bank at all times during the usual hours for the transaction of business.

1921, c. 4, s. 56.

269. Directors, officers, etc., accepting fees, etc. No gift, fee, permission, or brokerage charge shall be received, directly or indirectly, by any officer, director, or employee of any bank doing business under this act, on account of any transaction to which the bank is a party. Any officer, director, employee, or agent who shall violate the provisions of this section shall be guilty of a misdemeanor, and shall be and thereafter remain ineligible as an officer, director, or employee of any bank doing business under this act. Nothing in this section shall be construed to prevent the payment of necessary and proper attorney's fees to any licensed attorney for professional services rendered.

1921, c. 4, s. 57.

270. Dividends, directors may declare. The board of directors of any bank may declare a dividend of so much of its undivided profits as they may deem expedient, subject to the requirements, hereinafter provided. Before such dividend is declared, not less than twenty-five per cent of the undivided profits of any bank, having a capital stock of fifteen thousand dollars or more, shall be carried to the surplus of such bank until its surplus amounts to fifty per cent of its paid-in capital stock; and not less than fifty per cent of the undivided profits of any bank having a capital stock of less than fifteen thousand dollars shall be carried to the surplus of such bank until its surplus amounts to one hundred per cent of its paid-in capital stock. In order to ascertain the undivided profits from which such dividend may be made, there shall be charged and deducted from the actual profits:

(a) All ordinary and extraordinary expenses, paid or incurred, in managing the affairs and transacting the business of the bank;

(b) Interest paid or then due on debts which it owes;

(c) All taxes due;

(d) All overdrafts which have been standing on the books of the bank for a period of sixty days or longer;

(e) All losses sustained by the bank. In computing the losses, debts owing to it which have become due and which are not in process of collection, and on which interest for one year or more is due and unpaid, unless same are well secured, and debts upon which final judgment has been recovered, but has been for more than one year unsatisfied, and on which also for a period of one year no interest has been paid, unless same are well secured, shall be included.

1921, c. 4, s. 58.

271. Surplus, shall not be used for. The surplus of any bank doing business under this act shall not be used for the purpose of paying expenses or losses until the credit to undivided profits has been exhausted. But any portion of such surplus may be converted into capital stock and distributed as a stock dividend, provided that such surplus shall not thereby be reduced below fifty per cent of the paid-in capital of such bank, having a paid-in capital of fifteen thousand dollars or more. When the surplus of any bank having a capital stock of less than fifteen thousand dollars shall reach an amount equal to one hundred per cent of its paid-in capital, the board of directors of such bank shall declare a dividend of fifty per cent of said surplus and distribute the same as a stock dividend: Provided, that where the distribution of such a stock dividend would increase the capital stock of any bank to an amount greater than fifteen thousand dollars, the board of directors of such bank may, in its discretion, declare a stock dividend of only so much of said surplus as will be necessary to increase the stock of the said bank to fifteen thousand dollars.

1921, c. 4, s. 59.

272. Overdrafts, payment by officer, etc. Any officer (other than a director), or employee of a bank, who shall permit any customer or other person to overdraw his account, or who shall pay any check or draft, the paying of which shall overdraw any account, unless the same shall be authorized by the board of directors or by a committee of such board authorized to act, shall be personally and individually liable to such bank for the amount of such overdrafts.

1921, c. 4, s. 60.

273. Officers and employees shall give bond. The active officers and employees of any bank, before entering upon their duties, shall give bond to the bank in a bonding company authorized to do business in North Carolina in the amount to be required by the directors, in such form as may be prescribed or approved

by the corporation commission. The corporation commission, or directors of such bank, may require an increase of the amount of such bond whenever they may deem it necessary. If injured by the breach of any bond given hereunder, the bank so injured by the breach may put the same in suit and recover such damages as it may have sustained.

1921, c. 4, s. 61; Ex. Session 1921, c. 18.

274. Officers and employees may borrow, when. No officer who is actively engaged in the management of any bank, or any employee, shall borrow any amount whatever from said bank by whom employed, except upon good collateral, or other ample security or endorsement; and no such loan shall be made until after it has been approved by a majority of the directors or a committee of the board of directors authorized to act.

1921, c. 4, s. 62.

275. Oaths of corporations. In all cases where a corporation is appointed administrator, executor, collector, or to any other fiduciary position, of which fiduciary an oath is required by law, such oath may be taken by such corporation by and through any officer or agent of said corporation who is authorized by law to verify pleadings in behalf of such corporation; and any oath so taken shall be valid as the oath of such corporation. Any oath heretofore taken in the manner aforesaid in behalf of a corporation as such fiduciary is hereby validated as the oath of such corporation.

C. S., s. 3192; 1919, c. 89, ss. 1, 2.

ART. 7. CORPORATION COMMISSION.

276. Corporation commission shall have supervision over, etc. Every bank, corporation, partnership, firm, company, or individual now or hereafter transacting the business of banking, or doing a banking business in connection with any other business, under the laws of and within this state, shall be subject to the provisions of this act, and shall be under the supervision of the corporation commission. The corporation commission shall exercise control of and supervision over the banks doing business under this act, and it shall be its duty to execute and enforce through the chief state bank examiner, the state bank examiners, and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to banks as defined in this act. For the more complete and thorough enforcement of the provisions of this act, the corpo-

ration commission is hereby empowered to promulgate such rules, regulations, and instructions, not inconsistent with the provisions of this act, as may in its opinion be necessary to carry out the provisions of the laws relating to banks and banking as herein defined, and as may be further necessary to insure such safe and conservative management of the banks under its supervision as will provide adequate protection for the interests of the depositors, creditors, stockholders, and public in their relations with such banks. All banks doing business under the provisions of this act shall conduct their business in a manner consistent with all laws relating to banks and banking, and all rules, regulations, and instructions that may be promulgated or issued by the corporation commission.

1921, c. 4, s. 63.

277. Reports of condition. Every bank shall make to the corporation commission not less than four reports during each year, according to the form which may be prescribed by said commission; which report shall be verified by the oath or affirmation of the president, vice president, cashier, secretary, or treasurer of said bank, and in addition thereto, two of the directors, in the case of incorporated banks, and in other cases by the oath or affirmation of the partners, members of the firm, or individual owner. Each such report shall exhibit in detail and under appropriate heads the resources, assets, and liabilities of such bank at the close of business on any past day by the corporation commission specified, and shall be transmitted to the corporation commission within ten days after the receipt of a request or requisition therefor from the commission; and in a form prescribed by the corporation commission; a summary of such report shall be published in a newspaper published in the place where the bank is located, or if there is no newspaper in the place, then in the nearest one published thereto in the county in which such bank is established. Proof of such publication shall be furnished the corporation commission in such form as may be prescribed by it.

1921, c. 4, s. 64.

Banks & Banking § 82. A bank depositor, on rumors of its insolvency, went to withdraw his deposits, but was informed by the vice president and director that the bank was perfectly solvent, and that "we have got all the money you want. You need never have any fears of this bank as long as I am in it." Such depositor, relying on such representations, permitted his deposits to remain. The bank was in fact insolvent when the representations were made. Held, that such vice president and director was personally liable to such depositor for the money lost by the failure of the bank.—*Townsend v. Williams*, 117 N. C. 330, 23 S. E. 461.

Banks & Banking § 82. Bank directors, who, by false and fraudulent statements to the state treasurer as to the condition of the bank, in order to conceal its insolvency, induce him not only to make new deposits of the state's money, but also to permit a portion of the money deposited by his predecessor to remain, are liable to such treasurer for any loss, either of the old or new deposits.—*Tate v. Bates*, 118 N. C. 287, 24 S. E. 482.

Banks & Banking § 82. A complaint charging bank directors with fraud and deceit in making false statements of the bank's solvency need not allege that defendant knew or believed the bank to be insolvent, such knowledge being conclusively presumed.—*Ibid.*

Banks & Banking § 54. It is the duty of the directors to know the condition of their bank, and to prevent publication of false statements of its condition, and by no private arrangement could they be excused from giving proper attention to such duties because they are nonresidents of the town wherein their bank is located.—*Houston v. Thornton*, 122 N. C. 365, 29 S. E. 827.

Banks & Banking § 54. Where it appears that the affairs of a bank were left in the management of officers thereof, who, by gross frauds extending through a period of several years, ruined the bank, and during which time false statements were published showing the bank to be in a good condition, the fact that the directors resided away from the town where the bank was located will not warrant the assumption that such directors could not, in the proper discharge of their duty, have ascertained that such statements were false.—*Ibid.*

Banks & Banking § 55. Where negligence of directors in permitting a false and fraudulent statement of the condition of a bank is the basis of an action against the directors, the plaintiff's right to recover should not be restricted to one instance of negligence, where there are many others in evidence.—*Ibid.*

278. Reports of condition of trust and surety companies. Every person, firm, corporation, or partnership doing a banking business, or a banking business in connection with any other business, shall make to the corporation commission not less than four reports during each year, showing the entire amount of trust, surety, fiduciary, and guaranty business as a part of the liabilities of said banking institution, which reports shall be published as are the reports of other banking institutions. If any person, firm, corporation, or copartnership shall show by said reports, or by the examination of any state bank examiner, that such liabilities are equal to the amount of the capital stock of such bank, the corporation commission shall have authority, and is hereby empowered to make such rules and regulations for the reduction of said liabilities as it may deem necessary for the protection of the creditors and depositors of such banking institution.

1921, c. 4, s. 65.

279. Special reports. The corporation commission may call for special reports whenever in its judgment it is necessary to inform it of the condition of any bank, or to obtain a full and

complete knowledge of its affairs. Said reports shall be in and according to the form prescribed by the corporation commission, and shall be verified in the manner provided in section sixty-four of this act, and shall be published as therein provided, if required by the commission so to be.

1921, c. 4, s. 66.

280. Failure to make report, penalty for. Every bank failing to make and transmit any report which the corporation commission is authorized to require by this act, and in and according to the form prescribed by said commission, within ten days after the receipt of a request or requisition therefor, or failing to publish the reports as required, shall forthwith be notified by the corporation commission, and if such failure continue for five days after the receipt of such notice, such delinquent bank shall be subject to a penalty of two hundred dollars. The penalty herein provided for shall be recovered in a civil action in any court of competent jurisdiction, and it shall be the duty of the attorney-general to prosecute all such actions.

1921, c. 4, s. 67.

281. Annual report of stockholders. Every bank doing business under this act shall at all times keep a correct record of the names of all its stockholders, and once in each year, or whenever called upon, file in the office of the corporation commission a correct list of all its stockholders, the resident address of each, and the number of shares held by each.

1921, c. 4, s. 68.

282. Official communications of corporation commission. Each official communication directed by the corporation commission, or any state bank examiner, to any bank, or to any officer thereof, relating to an examination or investigation conducted or made by the banking department of the corporation commission, or containing suggestions or recommendations as to the conduct of the bank shall, if required by the authority submitting same, be submitted by the officer or director receiving it, to the executive committee or board of directors of such bank and duly noted in the minutes of such meeting. The receipt and submission of such notice to the executive committee or board of directors shall be certified to the corporation commission within such time as it may require, by three members of such committee or board.

1921, c. 4, s. 69.

283. Books, records, etc., corporation commission may prescribe. Whenever in its judgment it may appear to be advisable, the

corporation commission may issue such rules, instructions, and regulations prescribing the manner of keeping books, accounts, and records of banks as will tend to produce uniformity in the books, accounts, and records of banks of the same class.

1921, c. 4, s. 70.

284. Reserve, when below legal requirement. When the reserve of any bank falls below the amount required by law, it shall not make new loans or discounts, otherwise than by discounting or purchasing bills of exchange, payable at sight or on demand, nor make dividends of its profits until the reserve required by law is restored. The corporation commission shall require any bank whose reserve falls below the amount herein required immediately to make good such reserve. In case the bank fails for thirty days thereafter to make good its reserve, the corporation commission may forthwith take possession of the property and business of such bank until its affairs be adjusted or finally liquidated as provided for in this act.

1921, c. 4, s. 71.

ART. 8. BANK EXAMINERS.

285. Bank examiners, appointed by corporation commission. The corporation commission, for the purpose of carrying out the provisions of this act, shall appoint from time to time a chief state bank examiner, such state bank examiners, assistant state bank examiners, clerks, and stenographers as may be necessary to make a thorough examination of and into the affairs of every bank doing business under this act, as often as the commission may deem necessary, and at least once each year. The corporation commission may at any time remove any person appointed by it under this act.

1921, c. 4, s. 72.

286. Bank examiners, duties, and powers. It shall be the duty of the examiners to verify all reports made to the corporation commission by the officers and directors, members, or individuals conducting any banking institution, as required by this act or by the corporation commission. The officers of every bank shall submit and surrender its books, assets, papers, and concerns to the examiners appointed under this act, who shall retain the custody and possession of such books, assets, papers, and concerns for such length of time as may be required for the purpose of making an examination as required by this act. (If any officer

shall refuse to surrender the books, assets, papers, and concerns as herein provided, or shall refuse to be examined under oath touching the affairs of such bank, the said examiner may forthwith take possession of the property and business of the bank and liquidate its affairs in accordance with the provisions of this act.

1921, c. 4, s. 73.

287. Officers and employees, removal of. The corporation commission shall have the right, and is hereby empowered, to require the immediate removal from office of any officer, director, or employee of any bank doing business under this act, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the bank, or who persistently violates the laws of this state or the lawful orders, instructions, and regulations issued by the corporation commission.

1921, c. 4, s. 74.

288. Examiners may administer oath. For the purpose of making examinations as required by this act, any duly appointed examiner may administer oaths to examine any officer, director, agent, employee, customer, depositor, shareholder of such bank, or any other person or persons, touching its affairs and business. Any examiner may summons in writing any officer, director, agent, employee, customer, depositor, shareholder, or any person or persons resident of this state to appear before him and testify in relation thereto.

1921, c. 4, s. 75.

289. Examiners may make arrest. When it shall appear to any examiner, by examination or otherwise, that any officer, agent, employee, director, stockholder, or owner of any bank has been guilty of a violation of the criminal laws of this state relating to banks, it shall be his duty, and he is hereby empowered to hold and detain such person or persons until a warrant can be procured for his arrest; and for such purposes such examiner shall have and possess all the powers of peace officers of such county, and may make arrest without warrant for past offenses. Upon report of his action to the corporation commission, it may direct the release of the person or persons so held, or, if in its judgment such person or persons should be prosecuted, the commission shall cause the solicitor of the judicial district in which such detention is had to be promptly notified, and the action against such person or persons shall be continued a reasonable time to enable the solicitor to be present at the trial.

1921, c. 4, s. 76.

290. Annual examination. One examination each year shall be designated the annual examination, and for such examination, or any special examination, the bank shall pay into the office of the corporation commission an examination fee not in excess of the following: Banks having total resources of not more than one hundred thousand dollars (\$100,000), twenty dollars (\$20); those having total resources of more than one hundred thousand dollars (\$100,000) and not over two hundred thousand dollars (\$200,000), twenty-eight dollars (\$28); those having total resources of more than two hundred thousand dollars (\$200,000) and not over three hundred thousand dollars (\$300,000), thirty-two dollars (\$32); those having total resources of more than three hundred thousand dollars (\$300,000) and not over four hundred thousand dollars (\$400,000), thirty-six dollars (\$36); those having total resources of more than four hundred thousand dollars (\$400,000) and not more than five hundred thousand dollars (\$500,000), forty dollars (\$40); those having total resources of more than five hundred thousand dollars (\$500,000) and not more than seven hundred and fifty thousand dollars (\$750,000), forty-eight dollars (\$48); those having total resources of more than seven hundred and fifty thousand dollars (\$750,000) and not more than one million dollars (\$1,000,000), sixty dollars (\$60), plus three dollars (\$3) for each one hundred thousand dollars (\$100,000) and fraction thereof until its resources reach five million dollars (\$5,000,000), and then two dollars (\$2) for each additional one hundred thousand dollars (\$100,000) and fraction thereof. All examinations made, other than those designated annual examinations, shall be deemed to be special examinations. In addition to the examination fees required to be paid, the banks under examination shall pay the expenses incurred by the examiners, which expenses may be prorated among the several banks of the state upon such a basis as may in the opinion of the corporation commission appear to be equitable and fair. For services performed for any bank other than examinations, the corporation commission may make such charge as in its opinion is fair and just. The corporation commission shall fix the compensation to be paid to the chief state bank examiner, state bank examiners, assistant state bank examiners, clerks, and stenographers employed in the banking department of the commission. The total compensation of said examiners, clerks, and stenographers shall not exceed in any one year the total fees and expenses collected under the provisions of this act.

291. Examiners shall make report. Examiners shall make a full and detailed report in writing to the corporation commission of the condition of each bank within ten days after each and every examination made by them.

1921, c. 4, s. 78.

ART. 9. PENALTIES.

292. Examiner making false report. If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank, which shall have been examined by him, with the intent to aid or abet the officers, owners, or agents of such bank in continuing to operate an insolvent bank, or if any such examiner shall keep or accept any bribe or gratuity given for the purpose of inducing him not to file any report of examination of any bank made by him, or shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, he shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state's prison for not less than four months nor more than ten years.

1921, c. 4, s. 79.

293. Examiners disclosing confidential information. If any bank examiner or other employee of the banking department of the corporation commission fails to keep secret the facts and information obtained in the course of an examination of a bank, excepts when the public duty of such examiner or employee requires him to report upon or take official action regarding affairs of such bank, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned not more than twelve months, or both, in the discretion of the court. Nothing in this section shall prevent the proper exchange of information with the representatives of the banking departments of other states, with the federal reserve bank or national bank examiners, or other authorities, with the creditors of such bank or others with whom a proper exchange of information is wise or necessary, or with the clearing-house officials and examiners.

1921, c. 4, s. 80.

294. Bank, unauthorized use of the word. No corporation shall hereafter be chartered under the laws of this state with the words "bank," "banking," "banker," or "trust" as a part of its name except corporations reporting to the corporation commission and under its supervision, or under the supervision of the Insur-

ance commissioner; nor shall any corporate name be so amended as to include the words "bank," "banking," "banker," or "trust," unless the corporation be under such provision. No person, association, firm, or corporation domiciled within the state of North Carolina, except corporations, persons, associations, or firms reporting to and under the supervision of the corporation commission, or under the supervision of the Insurance Commissioner, shall therein advertise or put forth any sign as bank, banking, banker, or trust company, or use the word bank, banking, banker, or trust as part of its name and title: Provided, that this act shall not be held to prevent any individual as such from acting in any trust capacity as heretofore. Any violation of the provisions of this section shall be a misdemeanor, and upon conviction thereof the offender shall be fined in a sum not exceeding five hundred dollars for each offense.

1921, c. 4, s. 81.

295. False reports, willfully and maliciously making. Any person who shall willfully and maliciously make, circulate, or transmit to another or others any statement, rumor, or suggestion, written, printed, or by word of mouth, which is directly or by inference derogatory to the financial condition, or affects the solvency or financial standing of any bank, or who shall counsel, aid, procure, or induce another to state, transmit, or circulate any such statement or rumor shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court.

1921, c. 4, s. 82.

296. Misapplication, embezzlement of funds, etc. Whoever being an officer, employee, agent, or director of a bank, embezzles, abstracts, or willfully misapplies any of the money, funds, credit, or property of such bank, whether owned by it or held in trust, or willfully and fraudulently issues or puts forth a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment, or decree, or makes a false statement or certificate as to a trust deposit or contract, for or under which such bank is acting as trustee, or makes a false entry in, or conceals the true and correct entry in a book, report, or statement of such bank, or who shall loan the funds or credit of any banks to any company or corporation known to be insolvent, or which has ceased to exist, or to any person upon the collateral security of any stocks or bonds of such company or corporation which is known to be insolvent, or which

has ceased to exist, or which never had any existence, or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith, intended to become the property of such bank, with intent to defraud or injure the bank or another person or corporation, or to deceive an officer of the bank or an agent appointed to examine the affairs of such bank, or publishes a false report relating to the financial condition of the bank, with the intent to conceal its true financial condition, or to defraud or injure it or another person or corporation, shall be guilty of a felony, and upon conviction thereof shall be fined not more than ten thousand dollars, or imprisoned in the state's prison not more than thirty years, or both.

1921, c. 4, s. 83.

297. False certification of a check. Whoever, being an officer, employee, agent, or director of a bank, certifies a check drawn on such bank, and willfully fails to forthwith charge the amount thereof against the account of the drawer thereof, or willfully certifies a check drawn on such bank unless the drawer of such check has on deposit with the bank an amount of money subject to the payment of such check and equivalent to the amount therein specified, shall be guilty of a felony, and upon conviction shall be fined not more than five thousand dollars, or imprisoned in the state's prison for not more than five years, or both.

1921, c. 4, s. 84.

298. Insolvent banks, receiving deposits in. Any person, being an officer or employee of a bank, who receives, or being an officer thereof, permits an employee to receive money, checks, drafts, or other property as a deposit therein when he has knowledge that such bank is insolvent, shall be guilty of a felony, and upon conviction thereof shall be fined not more five thousand dollars or imprisoned in the state's prison not more than five years, or both.

1921, c. 4, s. 85.

As to civil liability of directors and officers making false reports and statements as to condition of bank, see 265 supra, and annotations thereunder.

299. Capital stock, advertising larger amount than that paid in. It shall be unlawful for any bank to advertise in a newspaper, letterhead, or any other way, a larger capital stock than has been actually paid-in in cash. Any bank violating this section shall be subject to a penalty of five hundred dollars for each and every offense. The penalty herein provided for shall be recovered

by the state in a civil action in any court of competent jurisdiction, and it shall be the duty of the attorney-general to prosecute all such actions.

1921, c. 4, s. 86.

300. Offenses against banking law. Any offense against the banking law of the state of North Carolina which is not elsewhere specifically declared to be a crime, or for which elsewhere a penalty is not specifically provided, is hereby declared to be a misdemeanor and shall be punishable at the discretion of the court. The corporation commission is authorized and directed to prosecute all offenses against the banking laws of the state, and to that end is expressly authorized to employ counsel to prosecute in the inferior courts and to aid the solicitor in the superior courts. The auditor of the state shall, upon the certificate of the chairman of the corporation commission, accompanied by an itemized statement of the account, draw his warrant upon the state treasurer to compensate the counsel so employed, and the state treasurer shall pay the same out of the funds in the treasury and not otherwise appropriated.

Ex. Session 1921, c. 56, s. 4.

301. General corporation law to apply. All provisions of the law relating to private corporations and particularly those enumerated in the chapter entitled "Corporations," not inconsistent with this act or with the business of banking, shall be applicable to banks.

1921, c. 4, s. 87.

ART. 10. INDUSTRIAL BANKS.

302. Industrial bank defined. The term "industrial bank" as used in this article shall mean any corporation formed under the provisions thereof, and any corporation heretofore organized under the general corporation law of this state which shall hereafter reorganize as an industrial bank pursuant to the provisions of this article.

C. S., s. 255; 1919, c. 225, s. 1.

303. Manner of organization. Corporations may be organized under this article in the same manner as provided for corporations authorized under the chapter on corporations.

C. S., s. 256; 1919, c. 225, s. 2.

304. Capital stock. The capital stock of an industrial bank shall not be less than twenty-five thousand dollars.

C. S., s. 257; 1919, c. 225, s. 3.

305. Corporate title. Every corporation incorporated or reorganized pursuant to the provisions of this article shall be known as an industrial bank, and may use the word "bank" as part of its corporate title.

C. S., s. 258; 1919, c. 225, s. 4.

306. Powers. In addition to the general powers conferred upon corporations formed under the chapter on corporations, every industrial bank shall have the following powers:

1. To loan money on real or personal security and reserve lawful interest in advance upon such loans, and to discount or purchase notes, bills of exchange, acceptances or other choses in action.

2. To sell or offer for sale its secured or unsecured evidences or certificates of indebtedness, or investment, and to receive from investors therein or purchasers thereof payments therefor in installments or otherwise, with or without an allowance of interest upon such payments, whether such evidence or certificates of indebtedness, or of investment be hypothecated for a loan or not, and to enter into contracts in the nature of a pledge or otherwise with such investors or purchasers with regard to said evidences or certificates of indebtedness, or of investment, and no such transaction shall, in any way, be construed to affect the rate of interest on such loans.

3. To charge for a loan made pursuant to this section one dollar for each fifty dollars or fraction thereof loaned, up to and including loans of two hundred and fifty dollars and, for loans in excess of two hundred and fifty dollars, one dollar for each two hundred and fifty dollars excess or fraction thereof, to cover expenses, including any examination or investigation of the character and circumstances of the borrower, comaker, or surety. An additional fee of five dollars may be charged on such loans where same are secured by mortgage on real estate. No charge shall be collected unless a loan shall have been made.

4. To establish branch offices or places of business within the county in which its principal office is located, but not elsewhere.

C. S., s. 259; 1919, c. 225, s. 5.

307. Restrictions on powers. No industrial bank shall—

1. Make any loan under the provisions of this article for a longer period than one year from the date thereof.

2. Deposit any of its funds in any banking corporation unless such corporation has been designated as such depository by a vote

of a majority of the directors, or of the executive committee, exclusive of any director who is an officer, director, or trustee of the depository so designated, present at any meeting duly called at which a quorum is in attendance.

C. S., s. 260; 1919, c. 225, s. 7.

308. Limit of loans. The total liabilities to any industrial bank of any person, corporation, company, or firm, for money borrowed, including in the liabilities of the company or firm, the liabilities of the several members thereof, shall at no time exceed ten per cent of the actually paid-up capital and surplus of such industrial bank, but the discount of bona fide bills of exchange or acceptances drawn against actually existing values, and the discount of commercial or business paper actually owned by the person or persons, corporation, company, or firm negotiating the same, shall not be considered money so borrowed.

C. S., s. 261; 1919, c. 225, s. 6.

309. Directors. At least three-fourths of the number of directors of any industrial bank shall be residents of the state of North Carolina.

C. S., s. 262; 1919, c. 225, s. 8.

310. Supervision and examination. Every industrial bank formed under the provisions of this article shall be subject to supervision by the corporation commission and subject to examination in the same manner as is provided in the case of state banks so far as the same may be applicable and not inconsistent with the provisions of this article.

C. S., s. 263; 1919, c. 225, s. 9.

311. Previously organized corporations may qualify. Any corporation heretofore organized under the general corporation law of this state, and authorized by its charter or articles of incorporation to engage in the business described in this article, shall, upon filing notice with the secretary of state and the corporation commission on or before January first, one thousand nine hundred and twenty, be recognized as an industrial bank within the provisions of this article and shall be subject to this article to the same extent as if actually incorporated hereunder.

C. S., s. 264; 1919, c. 225, s. 10.

The Par Clearance Act, Chapter 20, Laws of 1921, having been declared unconstitutional by the Supreme Court of North Carolina in the case of Farmers and Merchants Bank v. Federal Reserve Bank of Richmond, Va., on May 24, 1922, is omitted.

CHAPTER V.

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ART. 1. GENERAL PROVISIONS.

312. Definitions. In this chapter, unless the context otherwise requires—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counterclaim and setoff.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

Steinhilper et al v. Basnight, 153 N. C. 293, 69 S. E. 220.

Mayers v. McRimmon et al, 140 N. C. 640, 53 S. E. 447.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

Steinhilper et al v. Basnight, 153 N. C. 293, 69 S. E. 220.

Mayers v. McRimmon et al, 140 N. C. 640, 53 S. E. 447.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

C. S., s. 2976; Rev., s. 2340; 1899, c. 733, s. 191.

313. Person primarily liable on instrument. The person primarily liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are secondarily liable.

C. S., s. 2977; Rev., s. 2342; 1899, c. 733, s. 192.

Principal and Surety § 65. Both the principal and surety, if the fact of

suretyship does not appear on the face of the note, are primarily liable.—*Robertson-Ruffin Co. v. Spain*, 173 N. C. 23, 91 S. S. 361.

Bills and Notes § 491. Where one whose name appeared on a note admitted execution and nonpayment, the burden is upon him to prove any matter in release.—*Ibid*.

Principal and Surety § 65. A surety on a note is primarily liable thereon within section above, declaring that the person primarily liable on an instrument is the person who by the terms thereof is absolutely required to pay the same.—*Rouse v. Wooten*, 140 N. C. 557, 53 S. E. 430.

314. What constitutes reasonable time. In determining what is reasonable time or an unreasonable time regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

C. S., s. 2978; Rev., s. 2343; 1899, c. 733, s. 193.

Singer Mfg. Co. v. Summers, 143 N. C. 102, 55 S. E. 522.

315. When law merchant governs. In any case not provided for in this chapter the rules of the law merchant shall govern.

C. S., s. 2979; Rev., s. 2344; 1899, c. 733, s. 196.

316. Acts to be done on Sunday or holiday. Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday, or on a holiday, the act may be done on the next succeeding secular or business day.

C. S., s. 2980; Rev., s. 2839; 1899, c. 733, s. 194.

317. Application of chapter. The provisions of this chapter do not apply to negotiable instruments made and delivered prior to the eighth day of March, one thousand eight hundred and ninety-nine.

C. S., s. 2981; Rev., s. 2345; 1899, c. 733, s. 195.

ART. 2. FORM AND INTERPRETATION.

318. Form of negotiable instrument. An instrument to be negotiable must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer; (2) must contain an unconditional promise or order to pay a sum certain in money; (3) must be payable on demand or at a fixed or determinable future time; (4) must be payable to the order of a specified person or to bearer; and (5) where the instrument is addressed to a drawee, he must be named, or otherwise indicated therein with reasonable certainty.

C. S., s. 2982; Rev., s. 2151; 1899, c. 733, s. 1.

Bills and Notes § 147. A note to be negotiable must be payable to the order of a-specified person, or to bearer.—*Johnson v. Lassiter*, 155 N. C. 47, 71 S. E. 23.

Bills and Notes § 150. A writing providing that for value received the signers jointly and severally promise to pay another or order a certain sum at a certain bank with interest and without any relief from valuation of appraisal law, being duly signed and dated, was a negotiable instrument.—*Myers v. Petty*, 153 N. C. 462, 69 S. E. 417.

Bills and Notes § 150. A note not payable to order or bearer is non-negotiable. *Newland v. Moore*, 173 N. C. 728, 92 S. E. 367.

Bills and Notes § 164. A note which recited that it was subject to the provisions of a deed is conditional and not negotiable. *Pope & Ballance v. Righter-Parry Lumber Co.*, 162 N. C. 206; 78 S. E. 65.

Bills and Notes § 151. The negotiability of a note is not destroyed by the fact that it bears on its face the words and figures "No. of Note 2,821. No. of Policy, 654,971."—*Breese v. Crumpton*, 121 N. C. 122, 28 S. E. 351.

Bills and Notes § 165. A statement in a promissory note payable to order that it was given for the purchase of a stallion, which the payee warranted, does not destroy the negotiability of the note. *Critcher v. Ballard*, 180 N. C. 111, 104 S. E. 134.

Bernard v. Union Trust Co., 159 Fed. 620, 86 C. C. A. 610, et seq., was tried in the Circuit Court of Appeals, Fourth District, upon appeal from the United States Court for the Eastern District of North Carolina. The Court that heard it was composed of Chief Justice Fuller, and Judges Morris and Brawley, and it held that a receiver's certificate is not negotiable within the law merchant, so as to relieve the purchaser or his assignee from equities arising out of the proceedings in the case. The Court said in its opinion, referring to receivers' certificates: "They are not commercial paper, and the purchaser or assignee can only recover upon them to the extent of the rights of the first payee. He is put upon inquiry, as to all that was done in the cause wherein the certificates are issued, and chargeable with notice. As said by the Court in *Union Trust Co. v. Ill. Midland Co.*, 117 U. S. 456, 6 Sup. Ct. 809, 29 L. Ed. 963: 'The receiver and those lending money to him on certificates issued and orders made without prior notice to the parties interested take the risk of the final action of the court in regard to the loans. The court always retains control of the matter; its records are accessible to lenders and subsequent holders, and the certificates are not negotiable instruments.'"

In a creditors' suit against a private corporation to which neither the bondholders of the corporation nor the trustee in the mortgage securing the same are parties, the court has no authority to issue receivers' certificates for pre-existing debts of the corporation and make the same a first lien on its property. *Union Trust Co. v. Southern Sawmills & Lumber Co.*, 166 Fed. 193, 92 C. C. A., 101. This case was heard in the Circuit Court of Appeals before Judges Waddill, Boyd and Dayton; and this case likewise was a North Carolina case coming up from the U. S. Circuit Court for the Eastern District of North Carolina at Raleigh.

319. What constitutes certainty as to sum. The sum payable is a sum certain within the meaning of this chapter, although it is to be paid (1) with interest; or (2) by stated installments; (3) by stated installments with a provision that upon default in

payment of any installment the whole shall become due; or (4) with exchange; whether at a fixed rate or at the current rate; or (5) with costs of collection or an attorney's fee in case payment shall not be made at maturity. But a provision incorporated in the instrument to pay counsel fees for collection is not enforceable, but does not affect the other terms of the instrument or the negotiability thereof.

C. S., s. 2983; Rev., ss. 2152, 2346; 1899, c. 733, ss. 2, 197; 1905, c. 327.

Bills and Notes § 110. Where suit was instituted in North Carolina on a note executed and payable in Georgia, the validity of a provision in it for attorney's fees in case of suit must be determined by the laws of North Carolina, and such provision is void in this state and cannot be enforced. *Exchange Bank v. Appalachian Land & Lumber Co.*, 128 N. C. 193, 38 S. E. 813.

320. When promise is unconditional. An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with (1) an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or (2) a statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

C. S., s. 2984; Rev., s. 2153; 1899, c. 733, s. 3.

Bills and Notes § 342. A note that indicated on its face the purpose for which it was given did not make it conditional. *Bank of Sampson v. Hatcher*, 151 N. C. 359, 66 S. E. 308.

Municipal Corporations § 938. Bonds issued by a municipality which specify the fund from which they are to be paid, held negotiable within the negotiable instruments act. *Commissioners of Cleveland County v. Citizens Natl. Bank of Gastonia*, 157 N. C. 191, 72 S. E. 996.

Bills and Notes § 164. A note which recited that it was subject to the provisions of a deed is conditional and not negotiable. *Pope & Ballance v. Righter-Parry Lumber Co.*, 162 N. C. 206, 78 S. E. 65.

321. What constitutes determinable future time. An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable (1) at a fixed period after date or sight; or (2) on or before a fixed or determinable future time specified therein; or (3) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

C. S., s. 2985; Rev., s. 2156; 1899, c. 733, s. 4.

Bills and Notes § 109. A stipulation in a note that it shall become due where there is a default in the payment of interest for ten days after demand is valid. *Newbern Banking & Trust Co. v. Duffy*, 153 N. C. 62, 68 S. E. 915.

Bills and Notes § 109. Notes, stipulating that, if the interest thereon shall not be paid when due, the whole indebtedness shall become due, mature on such default in interest.—*Battery Park Bank v. Loughran*, 122 N. C. 668, 30 S. E. 17.

322. Additional provisions as affecting negotiability. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which (1) authorizes the sale of collateral securities in case the instrument be not paid at maturity; or (2) authorizes a confession of judgment if the instrument be not paid at maturity; or (3) waives the benefit of any law intended for the advantage or protection of obligor; or (4) gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal, nor authorize the enforcement of an authorization to confess judgment or a waiver of homestead and personal property exemptions.

C. S., s. 2986; Rev., ss. 2154, 2346; 1899, c. 733, ss. 5, 197; 1905, c. 327.

As to counsel fees, see Sec. 319.

Bills and Notes § 99. Where suit was instituted in North Carolina on a note executed and payable in Georgia, the validity of a provision waiving homestead exemption must be determined by the laws of North Carolina, and such provision cannot be enforced. *Exchange Bank v. Appalachian Land & Lumber Co.*, 128 N. C. 193, 38 S. E. 813.

323. Effect of omissions; seal; designation of particular money. The validity and negotiable character of an instrument are not affected by the fact that (1) it is not dated; or (2) does not specify the value given, or that any value has been given therefor; or (3) does not specify the place where it is drawn or the place where it is payable; or (4) bears a seal; or (5) designates a particular kind of current money in which payment is to be made. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

C. S., s. 2987; Rev., s. 2155; 1899, c. 733, s. 6.

324. When payable on demand. An instrument is payable on demand (1) when it is expressed to be payable on demand, or at sight or on presentation; or (2) in which no time for payment is expressed. Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

C. S., s. 2988; Rev., s. 2157; 1899, c. 733, s. 7.

Bills and Notes § 129. A note payable on demand is due on the day of its date. *Causey v. Snow*, 122 N. C. 326, 29 S. E. 359.

Limitation of Actions § 48. When no time is specified for the payment of a bond it is due at its execution, and the statute of limitations begins to run at once. *Ervin v. Brooks*, 111 N. C. 358, 16 S. E. 240.

325. When payable to order. The instrument is payable to order when it is drawn payable to the order of a specified person, or to him or his order. It may be drawn payable to the order of (1) a payee who is not maker, drawer or drawee; or (2) the drawer or maker; or (3) the drawee; or (4) two or more payees jointly; or (5) one or more of several payees; or (6) the holder of an office for the time being. When the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

C. S., s. 2989; Rev., s. 2158; 1899, c. 733, s. 8.

Bills and Notes § 147. A note to be negotiable must be payable to the order of a specified person, or to bearer.—*Johnson v. Lassiter*, 155 N. C. 47, 71 S. E. 23.

Bills and Notes § 150. A note not payable to order or bearer is non-negotiable.—*Newland v. Moore*, 173 N. C. 728, 92 S. E. 367.

326. When payable to bearer. The instrument is payable to bearer (1) when it is expressed to be so payable; or (2) when it is payable to a person named therein or to bearer; or (3) when it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or (4) when the name of the payee does not purport to be the name of any person; or (5) when the only or last indorsement is an indorsement in blank.

C. S., s. 2990; Rev., s. 2159; 1899, c. 733, s. 9.

327. No formal language required. The negotiable instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

C. S., s. 2991; Rev., s. 2160; 1899, c. 733, s. 10.

328. Presumption as to date. Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement, as the case may be.

C. S., s. 2992; Rev., s. 2161; 1899, c. 733, s. 11.

329. Antedated and postdated. The instrument is not invalid for the reason only that it is antedated or postdated, provided that this is not done for an illegal or fraudulent purpose. The

person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

C. S., s. 2993; Rev., s. 2162; 1899, c. 733, s. 12.

330. When date may be inserted. When an instrument expressed to be payable at a fixed period after date is issued, undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him the date so inserted is to be regarded as the true date.

C. S., s. 2994; Rev., s. 2163; 1899, c. 733, s. 13.

331. When blanks may be filled. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument after completion be negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

C. S., s. 2995; Rev., s. 2164; 1899, c. 733, s. 14.

Bills and Notes § 60. Where one signs a note in blank and gives it to another, who fills in the name of the payee and the amount, the signer is liable on the note to any holder in good faith. *Phillips v. Hensley*, 175 N. C. 23, 94 S. E. 673.

Bills and Notes § 327. A person dealing with a negotiable instrument has the right to act on it as it appears on the face of it.—*Citizens Natl. Bank of Durham v. Burch*, 145 N. C. 317, 59 S. E. 71.

332. Incomplete instrument not delivered. Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery.

C. S., s. 2996; Rev., s. 2165; 1899, c. 733, s. 15.

Alt. of Insts. § 13. If the maker of a sealed note, blank as to the payee's

name, after the insertion of the payee's name acknowledges the same to be his, it is valid and the maker is liable thereon.—*Wester v. Bailey*, 118 N. C. 193, 24 S. E. 9.

333. Delivery necessary; when effectual; when presumed. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery in order to be effectual must be made either by or under the authority of the party making, drawing or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course a valid delivery thereof by all parties prior to him, so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

C. S., s. 2997; Rev., s. 2166; 1899, c. 733, s. 16.

Bills and Notes § 208. An instrument payable to bearer can be negotiated by delivery and consequently no endorsement is required. *Tyson v. Joyner*, 139 N. C. 69, 51 S. E. 803.

Bills and Notes § 209. A note may be transferred by delivery and without indorsement, and, though such transfer does not pass the legal title according to the law merchant, the transferee is the equitable assignee thereof.—*Jenkins v. Wilkinson*, 113 N. C. 532, 18 S. E. 696.

334. Construction, where instrument is ambiguous. Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

Bills and Notes § 158. A note with a blank for rate of interest is negotiable. *Franklin Natl. Bank v. Roberts Bros. Co.*, 168 N. C. 473, 84 S. E. 706.

Interest § 39. A note, given life insurer for first premium on policy, which specified it bore interest at rate of 6 per cent, bore interest from date.—*Owens v. North State Life Ins. Co.*, 173 N. C. 373, 92 S. E. 168.

A note reciting that it is payable "with legal interest" bears interest from its date.—*Gholson v. King*, 79 N. C. 162.

3. Where the instrument is not dated it will be considered to be dated as of the time it was issued.

4. Where there is conflict between the written and printed provisions of the instrument the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or a note the holder may treat it as either at his election.

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

C. S., s. 2998; Rev., ss. 1952, 2341; 1899, c. 733, s. 17.

335. Signature must appear; trade or assumed name. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

C. S., s. 2999; Rev., s. 2167; 1899, c. 733, s. 18.

Bills and Notes § 121. One who signs in form and appearance as a principal and maker of a note is bound as such to all persons who subsequently deal with the paper without knowledge of his true relation to it.—*Citizens Natl. Bank of Durham v. Burch*, 145 N. C. 317, 59 S. E. 71.

Bills and Notes § 121. Persons who sign a note as obligors are bound by the stipulations contained therein whether their names appear in the body of the instrument itself or not.—*Howell v. Parsons*, 89 N. C. 230.

336. Signature by agent; how authority shown. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency.

C. S., s. 3000; Rev., s. 2168; 1899, c. 733, s. 19.

Bills and Notes § 523. An indorsement may be made by an agent duly authorized.—*Midgett v. Basnight*, 173 N. C. 18, 91 S. E. 353.

Principal and Agent § 49. The authority to draw, accept or indorse bills, notes and checks will not readily be implied as an incident to the express authority of an agent. It must ordinarily be conferred expressly, but it may be implied if the execution of the paper is a necessary incident to the business, that is, if the purpose of the agency cannot otherwise be accomplished.—*Bank of Morganton v. Hay*, 143 N. C. 326, 55 S. E. 811.

337. Liability of person signing as agent. Where the instrument contains, or a person adds to his signature, words indicating that he signed for or on behalf of the principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

C. S., s. 3001; Rev., s. 2169; 1899, c. 733, s. 20.

338. Effect of signature by procuration. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent so signing acted within the actual limits of his authority.

C. S., s. 3002; Rev., s. 2170; 1899, c. 733, s. 21.

Attorney and Client § 81. An attorney to whom a note is sent for collection has no authority to indorse the same in the name of his client.—*Sherrill v. Weisiger Clothing Co.*, 114 N. C. 436, 19 S. E. 365.

339. Effect of forged signature. When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

C. S., s. 3003; Rev., s. 2171; 1899, c. 733, s. 23.

Banks and Banking § 148. A bank with which a person has a deposit assumes responsibility for the erroneous payment of any check not drawn or authorized by the depositor.—*Bank of Brunswick v. Thompson*, 174 N. C. 349, 93 S. E. 849; *State Bank v. Cumberland Savings & Trust Co.*, 168 N. C. 605, 85 S. E. 5; *Yarborough v. Banking Loan & Trust Co.*, 142 N. C. 377, 55 S. E. 296.

ART. 3. CONSIDERATION.

340. Presumption of consideration. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.

C. S., s. 3004; Rev., s. 2172; 1899, c. 733, s. 24.

Bills and Notes § 90. A note under seal does not require a consideration, because the seal itself imports one.—*Burris v. Starr*, 165 N. C. 657, 81 S. E. 929.

Bills and Notes § 493. Note under seal purports consideration, but such presumption is rebuttable as between parties.—*Farrington v. McNeill*, 174 N. C. 420, 93 S. E. 957.

Bills and Notes § 493. A sealed note needs no consideration to support it.—*Wester v. Bailey*, 118 N. C. 193, 24 S. E. 9; *Piner v. Brittain*, 165 N. C. 401, 81 S. E. 462; *Columbian Conservatory of Music v. Dickinson*, 158 N. C. 207, 73 S. E. 990.

341. What constitutes consideration. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time.

C. S., s. 3005; Rev., s. 2173; 1899, c. 733, s. 25.

Bills and Notes § 92. A note embodying a promise to pay what one is already obligated to pay is supported by a good consideration in the implied agreement of the promisee to suspend his remedy until the maturity of the note.—*Cherokee County v. Meroney*, 173 N. C. 653, 92 S. E. 616.

Bills and Notes § 93. The release of the drawer of an order is a sufficient consideration for an acceptance of the order.—*Craig & Wilson v. Stewart & Jones*, 163 N. C. 531, 79 S. E. 1100.

Bills and Notes § 95. One promissory note is a good consideration for another given in exchange.—*Franklin Natl. Bank v. Roberts Bros. Co.*, 168 N. C. 473, 84 S. E. 706.

Bills and Notes § 186. Where a note was transferred for a debt of the payee, the consideration sustained the transfer, and an instruction that there was no evidence of consideration was erroneous.—*American Exch. Natl. Bank v. Seagroves*, 166 N. C. 608, 82 S. E. 947.

Bills and Notes § 92. The release by a wife of her right of dower involved in signing mortgages for \$50,000 is a valuable consideration for a note for \$15,000 executed by her husband to her.—*Southern Loan & Trust Co. v. Benbow*, 135 N. C. 303, 47 S. E. 435.

Bills and Notes § 92. An antecedent debt constitutes value.—*Singer Mfg. Co. v. Summers*, 143 N. C. 102, 55 S. E. 522.

Bills and Notes § 92. The forbearance to enforce the payment of a prior debt is sufficient consideration to fix the liability of the defendant on the renewal note.—*Bank of New Hanover v. Bridgers*, 98 N. C. 67, 3 S. E. 826; *Johnson v. Rodeger*, 119 N. C. 446, 25 S. E. 1021; *Murchison Natl. Bank v. Dunn Oil Mills Co.*, 150 N. C. 718, 64 S. E. 885.

342. What constitutes a holder for value. Where value has at any time been given for the instrument the holder is deemed a holder for value in respect to all parties who became such prior to that time.

C. S., s. 3006; Rev., s. 2174; 1899, c. 733, s. 26.

Bills and Notes § 525. A bank which introduced in evidence a draft indorsed to it and proved the indorsement, made a prima facie case that it was a purchaser, not a collecting agency.—*Worth Co. v. International Sugar Feed Co.*, 172 N. C. 335, 90 S. E. 295.

343. When lien on instrument constitutes holder for value. Where the holder has a lien on the instrument arising either from contract or by implication of law he is deemed a holder for value to the extent of his lien.

C. S., s. 3007; Rev., s. 2175; 1899, c. 733, s. 27.

Bills and Notes § 358. Persons taking notes for an antecedent debt or as collateral security are holders for value.—*J. L. Smathers & Co. v. Toxaway Hotel Co.*, 162 N. C. 346, 78 S. E. 224; *Brooks v. Sullivan*, 129 N. C. 190, 39 S. E. 822.

344. Effect of want of consideration. Absence or failure of consideration is matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

C. S., s. 3008; Rev., s. 2176; 1899, c. 733, s. 28.

Bills and Notes § 493. The burden of proving want of consideration of a note sued on by the payee is on the maker.—*Piner v. Brittain*, 165 N. C. 401, 81 S. E. 462.

Bills and Notes § 493. The burden is on the maker of a note to show want of consideration.—*Columbian Conservatory of Music v. Dickinson*, 158 N. C. 207, 73 S. E. 990.

Bills and Notes § 452. The absence of consideration for a negotiable instrument is a defense against any one not a holder in due course.—*Hardy v. Mitchell*, 156 N. C. 76, 72 S. E. 95.

Bills and Notes § 370. Failure of consideration of a note, unknown to its indorsee, does not affect right of recovery on a note given in renewal thereof, by the maker, directly to the indorsee, whereupon the original note was discharged and canceled.—*American Nat. Bank of Richmond v. Hill*, 169 N. C. 235, 85 S. E. 209.

345. Liability of accommodation party. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

C. S., s. 3009; Rev., s. 2177; 1899, c. 733, s. 29.

Bills and Notes § 495. If the paper is in fact accommodation paper then, notwithstanding its form, the drawer is primarily liable and not entitled to notice, but the burden of showing this is upon the holder.—*National Bank of Asheville v. Bradley*, 117 N. C. 526, 23 S. E. 455.

Bills and Notes § 256. Surrender of collateral deposited with the holder by the maker of a note to secure it, without the consent of an accommodation indorser, operates to release the indorser pro tanto.—*Bank of Fayetteville v. Nimocks*, 124 N. C. 352, 32 S. E. 717.

Bills and Notes § 414. Accommodation indorsers are entitled to notice of dishonor. The fact that accommodation indorsers are directors of the corporation, which is the maker, and constitute a majority of the board of directors, does not deprive them of right to notice of dishonor.—*Houser v. Faysoux*, 168 N. C. 1, 83 S. E. 692.

Principal and Surety § 115. Where plaintiffs either owning or having a lien on vehicles in bankrupt's possession, the value of which largely exceeded renewal notes given for the price on which defendants were sureties,

voluntarily discharged the lien and released the vehicles to bankrupt's trustee, defendants were discharged from liability on the notes.—*Brown Carriage Co. v. Dowd*, 155 N. C. 307, 71 S. E. 721.

Bills and Notes § 371. Defendants, by way of accommodation, signed a promissory note in blank, and delivered it to certain of the makers, who filled in their names as payees. Held that defendants were liable on the notes as against bona fide purchaser thereof for value.—*Norfolk Natl. Bank v. Griffin*, 107 N. C. 173, 11 S. E. 1049.

Partnership § 258. Where the surviving partner of a firm which had discounted a note indorsed by defendant as accommodation payee, for the benefit of the deceased partner as maker thereof, brings an action thereon, either as such partner or as receiver of the firm, he must show that he has not in his hands sufficient assets of the firm to pay its debts, and leave enough of a surplus to which the deceased partner's estate would be entitled to pay the note.—*Patton v. Carr*, 117 N. C. 176, 23 S. E. 182.

Bills and Notes § 538. In an action on a note, an issue whether defendant was an accommodation indorser and surety was irrelevant, where any indorser could be sued without joining the maker or other surety.—*State Bank of Chicago v. Carr*, 130 N. C. 479, 41 S. E. 876.

ART. 4. NEGOTIATIONS.

346. What constitutes negotiation. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, and completed by delivery.

C. S., s. 3010; Rev., s. 2178; 1899, c. 733, s. 30.

Bills and Notes § 351. A transferee of notes and mortgages after maturity holds them subject to any defenses existing against the transferor.—*Wilkins-Ricks Co. v. Welch*, 179 N. C. 266, 102 S. E. 316.

Bills and Notes §§ 214, 330. An indorsement written on a note payable to order, but not signed by the payee, or by any one in his behalf, does not make the transferee of the note a holder in due course, but gives him only an equitable title thereto.—*Critchler v. Ballard*, 180 N. C. 111, 104 S. E. 134.

Bills and Notes § 330. Negotiation of a note by delivery without indorsement passes only the equitable title and will not give the transferee title free from defenses good against the payee.—*Elgin City Banking Co. v. McEachern*, 163 N. C. 333, 79 S. E. 680.

Bills and Notes § 209. Where a note was payable to a certain person or order, its indorsement was necessary to transfer title.—*Myers v. Petty*, 153 N. C. 462, 69 S. E. 417.

Bills and Notes § 330. To make one a holder in due course of a negotiable note payable to order, it must have been indorsed to him.—*Woods v. Finley*, 153 N. C. 497, 69 S. E. 502.

Bills and Notes § 474. An allegation in the answer in an action on a note, denying its indorsement, does not rebut the presumption raised by law that the holder is the rightful owner of the note.—*Ibid.*

Bills and Notes § 330. The holder of a draft payable to order, in the absence of proof of indorsement by the payee, was not a bona fide pur-

chaser for value without notice.—*Mayers v. McRimmon*, 140 N. C. 640, 53 S. E. 447.

Bills and Notes § 330. The transfer without indorsement of a negotiable instrument payable to order does not pass the legal title, and hence the transferee is not a bona fide holder.—*Breese v. Crumpton*, 121 N. C. 122, 28 S. E. 351.

347. How indorsement made. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

C. S., s. 3011; Rev., s. 2179; 1899, c. 733, s. 31.

Bills and Notes § 330. To be valid and constitute the indorsee a holder in due course, a paper bearing indorsements must be attached physically to the note.—*Commercial Security Co. v. Main Street Pharmacy*, 174 N. C. 655, 94 S. E. 298.

Bills and Notes § 287. The placing of the name of the payee of a draft on the back thereof with a rubber stamp, by a person having authority to do so, and with intent to indorse the instrument, constitutes a valid indorsement.—*Mayers v. McRimmon*, 140 N. C. 640, 53 S. E. 447.

Evidence § 403. Where a wife, the owner of a note, and her husband, indorse it to another, the indorsement may be explained as between the immediate parties.—*Coffin v. Smith*, 128 N. C. 252, 38 S. E. 864.

348. Effect of indorsement by infant or corporation. The indorsement or assignment of the instrument by a corporation, an infant, or married woman passes the property therein, notwithstanding that from want of capacity the corporation, infant, or married woman may incur no liability thereon.

C. S., s. 3012; Rev., s. 2180; 1899, c. 733, s. 22.

349. Indorsement must be of entire instrument. An indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part it may be indorsed as to the residue.

C. S., s. 3013; Rev., s. 2181; 1899, c. 733, s. 32.

350. Kinds of indorsement. An indorsement may be either in blank or special, and it may also be either restrictive or qualified or conditional.

C. S., s. 3014; Rev., s. 2182; 1899, c. 733, s. 33.

351. Special indorsement; indorsement in blank. A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An

indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery.

C. S. s. 3015; Rev., s. 2183; 1899, c. 733, s. 34.

Bills and Notes § 330. A note payable to order must be specially indorsed by the payee (and prior indorsees, if any) to the holder or at least in blank to make him its legal owner and the bona fide holder of a title good against prior equities of which he is not shown to have had notice.—*Tyson v. Joyner*, 139 N. C. 69, 51 S. E. 803.

Bills and Notes § 330. Where a note is indorsed in blank, the holder has the authority to make it payable to himself or to any other person by filling up the blank over the signature, and this may be done at, or before, the trial.—*Ibid.*

Bills and Notes § 330. The presumption is, nothing else appearing, that the indorsement in blank of a note by the payee constitutes a transfer of the note to the indorser; but the indorsement is subject to explanation as between the immediate parties.—*Coffin v. Smith*, 128 N. C. 252, 38 S. E. 864.

Bills and Notes § 497. Holder of note indorsed in blank presumably took it for value, without notice of outstanding equities.—*Gulf States Steel Co. v. Ford*, 173 N. C. 195, 91 S. E. 844.

Bills and Notes § 497. It is error to place on an indorsee, who has proved the indorsement, the burden of proving that he is a bona fide purchaser; there being no evidence that his title is defective.—*Moon v. Simpson*, 170 N. C. 335, 87 S. E. 118.

Bills and Notes § 496. Except in case of instruments payable to bearer, to make one a holder in due course of a negotiable instrument, the burden is upon the indorsee to prove indorsement to him, if it be denied.—*Park v. Exum*, 156 N. C. 228, 72 S. E. 309.

Bills and Notes § 497. Where the maker of a note alleges fraud in its inception, the holder has the burden of proving that he was an indorsee for value before maturity and without knowledge of the fraud.—*Chadwick v. Kirkman*, 159 N. C. 259, 74 S. E. 968.

Bills and Notes § 188. The rule that a holder of a note may fill up a blank indorsement by making it payable to himself or some one else applies only where he obtains the note, not from the payee or a prior indorser, but as a bona fide purchaser, without any knowledge or notice of the relation sustained by prior indorsers to the note.—*Adrian v. McCaskill*, 103 N. C. 182, 9 S. E. 284.

352. How blank indorsement changed to special indorsement. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

C. S., s. 3016; Rev., s. 2184; 1899, c. 733, s. 35.

Bills and Notes § 330. Where a note is indorsed in blank, the holder has the authority to make it payable to himself or to any other person by filling up the blank over the signature, and this may be done at, or before, the trial.—*Tyson v. Joyner*, 139 N. C. 69, 51 S. E. 803.

Bills and Notes § 330. But he is not at liberty to write over the blank

indorsement any words which shall change the liability created by law upon the indorser, or at least none which shall not be in exact conformity to the agreement under which the indorsement was made by the indorser to the indorsee.—*Lilly v. Baker*, 88 N. C. 151.

353. When indorsement restrictive. An indorsement is restrictive which either (1) prohibits the further negotiation of the instrument; or (2) constitutes the indorsee the agent of the indorser; or (3) vests the title in the indorsee in trust for, or to the use of, some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

C. S., s. 3017; Rev., s. 2185; 1899, c. 733, s. 36.

Banks & Banking § 156. Where note, payable at maker's bank of deposit, was sent to such bank for collection, the bank was the agent of the payee.—*Peaslee-Gaulbert Co. v. Dixon*, 172 N. C. 411, 90 S. E. 421.

Banks & Banking § 156. A bank which discounts a depositor's drafts under an agreement that if they are returned unpaid they shall be charged back to his account and returned to him, is merely an agent for collection.—*Latham v. Spragins*, 162 N. C. 404, 78 S. E. 282.

Bills and Notes § 290. A draft or bill transferred to a bank by restrictive indorsement as "for deposit" or "for collection," is taken and held by the bank as agent for the indorser. *Murchison Natl. Bank v. Dunn Oil Mills Co.*, 150 N. C. 718, 64 S. E. 885.

Bills and Notes § 290. When a bank to which a draft, appearing on its face to be negotiable, is forwarded by another bank, purchases it for value, without notice of an agreement restricting its negotiation, the drawer may not stop payment of the draft as against the rights of the bank so holding the paper.—*Ibid.*

Bills and Notes § 281. Where a payee or regular indorser of a note writes his name on the back, the law, as between him and a bona fide holder for value and without notice, implies that he intended to assume the liability of an indorser.—*Sykes v. Everett*, 167 N. C. 600, 83 S. E. 585.

Bills and Notes § 491. The burden of proof is upon an indorser to show any agreement limiting his liability.—*Davidson v. Powell*, 114 N. C. 575, 19 S. E. 601.

Banks & Banking § 159. A negotiable instrument deposited in a bank indorsed "for collection" remains the property of the depositor.—*Armour Packing Co. v. Davis*, 118 N. C. 548, 24 S. E. 365.

Banks & Banking § 159. The restrictive indorsement "for collection" was notice to the bank that plaintiff was the owner of the draft and the forwarding bank was only an agent.—*Boykin Seddon & Co. v. Bank of Fayetteville*, 118 N. C. 566, 24 S. E. 357.

354. Effect of restrictive indorsement; rights of indorsee. A restrictive indorsement confers upon the indorsee the right (1) to receive payment of the instrument; (2) to bring any action thereon that the indorser could bring; (3) to transfer his rights as such indorsee, where the form of the indorsement authorizes

him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

C. S., s. 3018; Rev., s. 2186; 1899, c. 733, s. 37.

Banks and Banking § 591. The restrictive indorsement "for collection" is notice to the bank that the forwarding bank was only an agent and prevents transfer of title.—*Boykin Seddon & Co. v. Bank of Fayetteville*, 118 N. C., 566, 24 S. E. 357.

Principal and Agent § 183. An agent designated as payee of a note is not entitled to sue thereon in his own name, except upon proof that the note was made payable to him with the consent of his principal; the burden of proving such fact being on him.—*Martin & Garrett v. Mask*, 158 N. C. 436, 74 S. E. 343.

One who holds a negotiable note as collateral for the payment of a debt may maintain an action thereon in his own name, but not one who holds "for collection," for the latter is not "the party in interest."—*Third Natl. Bank of St. Louis v. Exum*, 163 N. C. 199, 79 S. E. 498.

355. Qualified indorsement. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

C. S., s. 3019; Rev., s. 2187; 1899, c. 733, s. 38.

Bills and Notes § 190. An indorsee of a negotiable instrument is not deprived of the position as holder in due course by the fact, and that alone, that said indorsement is in form "without recourse."—*Bank of Sampson v. Hatcher*, 151 N. C. 359, 66 S. E. 308.

Bills and Notes § 190. An indorsee on a note, under an indorsement reciting that the indorser transfers his right and title to the indorsee named, is a holder in due course, though the indorser is liable on specified warranties.—*Evans v. Freeman*, 142 N. C. 61, 54 S. E. 847.

Bills and Notes § 190. The expression "without recourse" does not throw any suspicion on the paper, or affect the bona fide character of a purchaser, although it may be evidence that value was not received by the indorser. Neither will such addition affect the negotiability of the instrument.—*Merchants National Bank v. Branson*, 165 N. C. 344, 81 S. E. 410.

Bills and Notes § 190. If the payee of a note intends to transfer the title only he should use the words "without recourse" or other phrase of similar import.—*Davidson v. Powell*, 114 N. C. 575, 19 S. E. 601.

356. Conditional indorsement. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same or the proceeds thereof subject to the rights of the person indorsing conditionally.

C. S., s. 3020; Rev. s. 2188; 1899, c. 733, s. 39.

357. Indorsement of instrument payable to bearer. Where an instrument payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

C. S., s. 3021; Rev., s. 2189; 1899, c. 733, § 40.

358. Indorsement of instrument payable to two or more persons. Where an instrument is payable to the order of two or more payees or indorseees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others.

C. S., s. 3022; Rev., s. 2190; 1899, c. 733, § 41.

Bills and Notes § 242. A surviving partner has no power after dissolution to renew or indorse a firm note in the name of the firm. And if he does so, he becomes individually liable on such indorsement, though it did not bind the firm.—*Natl. Bank of Maryland v. Hollingsworth*, 135 N. C. 556, 55 S. E. 809.

359. Effect of instrument drawn or indorsed to a person as cashier. Where an instrument is drawn or indorsed to a person as cashier or other fiscal officer of a bank or corporation it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer.

C. S., s. 3023; Rev., s. 2191; 1899, c. 733, § 42.

360. Indorsement, where payee's name misspelled. Where the name of a payee or indorsee is wrongly designated or misspelled he may indorse the instrument as there described, adding, if he think fit, his proper signature.

C. S., s. 3024; Rev., s. 2192; 1899, c. 733, § 43.

361. Indorsement in representative capacity. Where any person is under obligation to indorse in a representative capacity he may indorse in such terms as to negative personal liability.

C. S., s. 3025; Rev., s. 2193; 1899, c. 733, § 44.

Bills and Notes § 123. Contracting parties are not prohibited from inserting in a written agreement a provision that an implication, which the law would otherwise raise, shall not arise; therefore, while an executrix who gives a note in her representative capacity for money borrowed to pay debts of the estate is personally liable, nothing else appearing, yet when it is so signed, but in the body of the note are inserted the words "L. L. M., Executrix, etc., but not personally," she is not personally liable.—*Morehead Banking Co. v. Morehead*, 116 N. C. 413, 21 S. E. 191.

362. Presumption as to time of indorsement. Except where an indorsement bears date after the maturity of the instrument,

every negotiation is deemed prima facie to have been effected before the instrument was overdue.

C. S., s. 3026; Rev., s. 2194; 1899, c. 733, s. 45.

Bills and Notes § 247. Indorsements in blank upon negotiable instrument are presumed to be made contemporaneous with the execution of such instrument.—*Southerland v. Fremont*, 107 N. C. 565, 12 S. E. 237.

363. Presumption as to place of indorsement. Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

C. S., s. 3027; Rev., s. 2195; 1899, c. 733, s. 46.

364. Continuation of negotiable character. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

C. S., s. 3028; Rev., s. 2196; 1899, c. 733, s. 47.

365. Striking out indorsement. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out and all indorsers subsequent to him are thereby relieved from liability on the instrument.

C. S., s. 3029; Rev., s. 2197; 1899, c. 733, s. 48.

366. Effect of transfer without indorsement. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had herein, and the transferee acquires in addition the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

C. S., s. 3030; Rev., s. 2198; 1899, c. 733, s. 49.

Bills and Notes §§ 214, 330. An indorsement written on a note payable to order, but not signed by the payee, or by any one in his behalf, does not make the transferee of the note a holder in due course, but gives him only an equitable title thereto.—*Critcher v. Ballard*, 180 N. C. 111, 104 S. E. 134.

Bills and Notes § 330. Negotiation of a note by delivery without indorsement passes only equitable title and will not give the transferee title free from defenses good against the payee.—*Elgin City Banking Co. v. McEachern*, 163 N. C. 333, 79 S. E. 680.

Bills and Notes § 209. Where a note was payable to a certain person or order, its indorsement was necessary to transfer title.—*Myers v. Petty*, 153 N. C. 462, 69 S. E. 417.

Bills and Notes § 330. To make one a holder in due course of a negotiable note payable to order, it must have been indorsed to him.—*Woods v. Finley*, 153 N. C. 497, 69 S. E. 502.

Bills and Notes § 330. The holder of a draft payable to order, in the absence of proof of indorsement by the payee, was not a bona fide purchaser for value without notice.—*Mayers v. McRimmon*, 140 N. C. 640, 53 S. E. 447.

Bills and Notes § 330. The transfer without indorsement of a negotiable instrument payable to order does not pass the legal title, and hence the transferee is not a bona fide holder.—*Breese v. Crumpton*, 121 N. C. 122, 28 S. E. 351.

Bills and Notes § 330. A note may be transferred by delivery and without indorsement, and, though such transfer does not pass the legal title according to the law merchant, the transferee is the equitable assignee thereof.—*Jenkins v. Wilkinson*, 113 N. C. 532, 18 S. E. 696.

367. When prior party may negotiate instrument. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

C. S., s. 3031; Rev., s. 2199; 1899, c. 733, s. 50.

Bills and Notes § 271. One who obtains possession of a note after indorsing it is restored to his original position, and cannot, nor can subsequent purchasers from him with notice of the fact, hold intermediate indorsers, who could look to him again.—*Adrian v. McCaskill*, 103 N. C. 182, 9 S. E. 284.

ART. 5. RIGHTS OF HOLDER.

368. Right of holder to sue; payment. The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument.

C. S., s. 3032; Rev., s. 2200; 1899, c. 733, s. 51.

Bills and Notes § 443. The holder in due course of a note indorsed to it as collateral security has the legal right to collect it, and may maintain an action thereon against the maker; it not appearing the indorser's debt has been paid.—*American Natl. Bank v. Hill*, 169 N. C. 235, 85 S. E. 209.

Bills and Notes § 443. Suit on a note must be brought by the real party in interest.—*Roller v. McKinney*, 159 N. C. 319, 74 S. E. 966.

Bills and Notes § 443. Where plaintiff sued on a note as equitable owner and produced the note, it was entitled to recover as the holder subject to any defenses which the maker might have against the original payee.—*Johnston County Sav. Bank v. Scroggin Drug Co.*, 152 N. C. 142, 67 S. E. 253.

Bills and Notes § 443. An assignee of a non-negotiable note is the proper person to sue thereon in his own name as the real party in interest.—*Thompson v. Osborne*, 152 N. C. 408, 67 S. E. 351.

Bills and Notes § 443. The assignee of a negotiable note endorsed by the clerk of the payee without authority is simply the holder of unindorsed paper, and as such has, prima facie, the equitable title and can maintain an action thereon.—*Breese v. Crumpton*, 121 N. C. 122, 28 S. E. 351.

Bills and Notes § 496. Bills, bonds and promissory notes, and all other

evidence of debt, although payable to order and not indorsed, may be given as donations *causa mortis*, and the donee may sue on them in his own name.—*Kiff v. Weaver*, 94 N. C. 274.

369. What constitutes holder in due course. A holder in due course is a holder who has taken the instrument under the following conditions: (1) That the instrument is complete and regular upon its face; (2) that he became the holder of it before it was overdue and without notice that it has been previously dishonored, if such was the fact; (3) that he took it for good faith and value; (4) that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

C. S., s. 3033; Rev., s. 2201; 1899, c. 733, s. 52.

Bills and Notes § 497. The law bearing upon negotiable instruments, as to when a holder of a note is one in "due course" has been well settled by the leading case of *American National Bank v. Fountain*, 148 N. C. 590, 62 S. E. 738, in a well considered opinion by Mr. Justice Hoke, which has been frequently cited and approved. In that case it is held: "When it is shown that a negotiable instrument sued on has been procured by fraud, or there is evidence tending to establish it, it is necessary for a recovery by one claiming to be the holder in due course to show by the greater weight of the evidence that he acquired the title (1) before maturity; (2) in good faith for value; (3) without notice of any infirmity or defect in the title of the person negotiating it."—*Raleigh Banking & Trust Co. v. Clark*, 172 N. C. 268, 90 S. E. 200.

Bills and Notes § 497. Our statute on negotiable instruments, as applied and construed in several recent decisions of the Court, is to the effect that in order to establish the position of holder in due course, when required to shut off counterclaims and defenses otherwise available, it must be shown that the instrument is complete and regular on its face and that title thereto was acquired in good faith and for value before maturity and without knowledge or notice of fraud or other impeaching circumstance, and, except in case of instruments payable to bearer, when the indorsement is denied, the same must be proved.—*Park v. Exum*, 156 N. C. 228, 72 S. E. 309.

Myers v. Petty, 153 N. C. 462, 69 S. E. 417.

Mayers v. McRimmon, 140 N. C. 640, 53 S. E. 447.

Tyson v. Joyner, 139 N. C. 69, 51 S. E. 803.

Bills and Notes § 497. In the absence of a plea of fraud in the transfer of a note, the transferee would be presumed to be a holder in due course without proving it.—*American Exch. Natl. Bank v. Seagroves*, 166 N. C. 608, 82 S. E. 947.

Bills and Notes § 497. When the maker of a note offers evidence of fraud of the payee in obtaining its execution or other infirmity, the *prima facie* case of an indorsee before maturity that he took without notice is so far rebutted as to shift the burden on him to show that he is a *bona fide* holder.—*Standard Trust Co. v. Commercial Natl. Bank*, 167 N. C. 260, 83 S. E. 474.

Bills and Notes § 497. Where the maker of a note establishes that it was obtained by fraud, a subsequent transferee, before entitled to recover

thereon, must show that he is bona fide purchaser or derived title from such a purchaser.—*First Natl. Bank v. Warsaw Drug Co.*, 166 N. C. 99, 81 S. E. 993.

Fidelity Trust Co. v. Whitehead, 165 N. C. 74, 80 S. E. 1065.

Merchants Natl. Bank of Indianapolis v. Branson, 165 N. C. 344, 81 S. E. 410.

J. L. Smathers & Co. v. Toxaway Hotel Co., 168 N. C. 69, 84 S. E. 47.

Bills and Notes § 351. A transferee of notes and mortgages after maturity holds them subject to any defenses existing against the transferor.—*Wilkins-Ricks Co. v. Welch*, 179 N. C. 266, 102 S. E. 316.

Bills and Notes §§ 214, 330. An indorsement written on a note payable to order, but not signed by the payee, or by any one in his behalf, does not make the transferee of the note a holder in due course, but gives him only an equitable title thereto.—*Critcher v. Ballard*, 180 N. C. 111, 104 S. E. 134.

Bills and Notes § 337. A purchaser of a negotiable instrument in due course before maturity does not have notice of equities, merely because he knows facts which would put a reasonably prudent man on inquiry which would result in ascertaining the equities.—*Ibid.*

Banks and Banking § 165. A bank acquiring in due course a draft for price of goods, with bill of lading attached, is the owner thereof, and the proceeds in the possession of another bank collecting the draft cannot be attached as the property of the seller; but, where the bank merely took the draft and bill of lading as a collecting agent, it acquires no property right in proceeds.—*Elm City Lumber Co. v. Childerhose & Pratt*, 167 N. C. 34, 83 S. E. 22.

Bills and Notes § 330. An indorsee of a negotiable instrument is not deprived of the position as holder in due course by the fact, and that alone, that said indorsement is in form "without recourse."—*Bank of Sampson v. Hatcher*, 151 N. C. 359, 66 S. E. 308.

Bills and Notes § 330. Where a note was payable to a certain person or order, its indorsement was necessary to transfer title.—*Myers v. Petty*, 153 N. C. 462, 69 S. E. 417.

Bills and Notes § 330. The holder of a draft payable to order, in the absence of proof of indorsement by the payee, was not a bona fide purchaser for value without notice.—*Mayers v. McRimmon*, 140 N. C. 640, 53 S. E. 447.

Bills and Notes § 330. The transfer without indorsement of a negotiable instrument payable to order does not pass the legal title, and hence the transferee is not a bona fide holder.—*Breese v. Crumpton*, 121 N. C. 122, 28 S. E. 351.

Bills and Notes § 351. Where purchase money notes secured by deed of trust, under which a purchaser of the notes proposed to sell the lands so incumbered, were past due at the time of his purchase, he took them subject to any equities and defenses existing in favor of the land purchaser against the vendor, such as the latter's agreement that prior liens created by deeds of trust to secure notes executed by him should be discharged before the purchase money notes should be valid obligations, and in such case the purchaser of the notes might be restrained from exercising the power of sale in the trust deed.—*Guthrie v. Moore*, 182 N. C. 10, 108 S. E. 334.

Bills and Notes § 375. The principle that a note for a gambling debt cannot be collected does not extend to suits by an innocent indorsee for

value and holder in due course, against the indorser on his contract of indorsement, which is by virtue of C. S. 3047, a contract independent of the instrument on which it appears, and guarantees that the note is a valid and subsisting obligation.—*Wachovia Bank & Trust Co. v. Crafton*, 181 N. C. 404, 107 S. E. 316.

370. When person not deemed holder in due course. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

C. S., s. 3034; Rev., s. 2202; 1899, c. 733, s. 53.

Bills and Notes § 348. In determining what is a reasonable or unreasonable time, regard is to be had to the nature of the instrument and the facts of the particular case; and where a party obtained a cashier's check from a bank in this state and negotiated the same to a party residing in Virginia in five days thereafter, such negotiation was within a reasonable time.—*Singer Mfg. Co. v. Summers*, 143 N. C. 102, 55 S. E. 522.

371. Notice before full amount paid. Where the transferee has received notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

C. S., s. 3035; Rev., s. 2203; 1899, c. 733, s. 54.

Bills and Notes § 352. Where the original consideration of the paper is illegal or fraudulent, or it is taken as collateral security, the right of recovery is restricted to the consideration actually paid by the indorsee before notice of the fraud, or the amount of the debt to which it is collateral.—*U. S. Natl. Bank of N. Y. v. McNair*, 116 N. C. 550, 21 S. E. 389.

372. When title defective. The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress or force and fear or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud.

C. S., s. 3036; Rev., s. 2204; 1899, c. 733, s. 55.

Moon v. Simpson, 170 N. C. 335, 87 S. E. 118.

Bills and Notes § 351. The familiar general rule is that an indorsee of negotiable paper for value before maturity, without notice of any infirmity, takes it clear of all equities and defenses between antecedent parties, and is, of course, entitled to recover the full amount of the same, according to its tenor. The exceptions to this rule are:

(1) When by statute the paper is void in whole or in part from its inception, as for usury. In such cases it is void to the same extent into whomsoever hands it may pass, even if acquired before maturity, for value and without notice, and the sole remedy of the holder for the deficiency is against the indorser.

(2) Where the original consideration of the paper is illegal or fraudulent, or it is taken as collateral security, the right of recovery is restricted

to the consideration actually paid by the indorsee before notice of the fraud.

But the exception does not extend further, not even to cases where the note was issued without any consideration, though it may be purchased by the indorsee for less than its face value.—U. S. Natl. Bank of N. Y. v. McNair, 116 N. C. 550, 21 S. E. 389.

373. What constitutes notice of defect. To constitute a notice of an infirmity in the instrument or defect in the title of the person negotiating the same the person to whom it is negotiated must have had actual knowledge of the infirmity or defect or knowledge of such facts that his action in taking the instrument amounted to bad faith.

C. S., s. 3037; Rev., s. 2205; 1899, c. 733, s. 56.

Bills and Notes § 337. A purchaser of a negotiable instrument in due course before maturity does not have notice of equities, merely because he knows facts which would put a reasonably prudent man on inquiry which would result in ascertaining the equities.—Critchler v. Ballard, 180 N. C. 111, 140 S. E. 134.

Bills and Notes § 525. In an action by an indorsee of notes, evidence held to show that the indorsee was a bona fide purchaser for value without notice of any infirmity.—Franklin Nat. Bank v. Roberts Bros. Co., 168 N. C. 473, 84 S. E. 706.

Bills and Notes § 525. Where the plaintiff sues on a negotiable note, claiming to be a holder in due course, and fraud in its execution is shown, the defendant may prove actual or constructive notice of fraud in rebuttal of the plaintiff's evidence, if he has offered sufficient proof to require it, or he may rely upon plaintiff's own evidence upon the issue as to whether he knew or should have known of it.—Merchants Nat. Bank v. Branson, 165 N. C. 344, 81 S. E. 410.

Bills and Notes § 525. Where fraud in the execution of a negotiable note has been shown, the burden of proof is on the plaintiff, an indorser thereof, and claiming as a holder in due course, to show not only that he acquired the paper for value before maturity, but also without notice of the infirmity of the instrument.—Ibid.

Bills and Notes § 525. In an action on a note by an indorsee, evidence held insufficient to charge plaintiff with knowledge of any fraud in its indorsement.—First Nat. Bank v. Brown, 160 N. C. 23, 75 S. E. 1086.

Bills and Notes § 497. The burden was on the maker of a note, in a suit thereon by a purchaser for value before maturity from one to whom the maker gave the note, to show that plaintiff knew of the infirmity relied on by the maker, or acted in bad faith.—Ibid.

Bills and Notes § 339. A holder of a note has notice of infirmity in the instrument or defect in the title of the person negotiating only when he has actual knowledge of the infirmity or defect, or the facts are such that the mere taking of the instrument amounts to bad faith, and he cannot be held to have notice of the facts which an inquiry would reveal.—J. L. Smathers & Co. v. Toxaway Hotel Co., 162 N. C. 346, 78 S. E. 224.

Bills and Notes § 332. A mala fide purchaser is made out only by proof of actual knowledge of the infirmity or defect or knowledge of such facts that the taking of the instrument amounted to bad faith.—Ibid.

Bills and Notes § 537. Whether holder of a note, negotiated by one who participated in its execution in fraud of creditors, took it without notice of such fraud, held for the jury.—*Ibid.*

Bills and Notes § 351. Where purchase money notes secured by deed of trust, under which a purchaser of the notes proposed to sell the lands so incumbered, were past due at the time of his purchase, he took them subject to any equities and defenses existing in favor of the land purchaser against the vendor, such as the latter's agreement that prior liens created by deeds of trust to secure notes executed by him should be discharged before the purchase money notes should be valid obligations, and in such case the purchaser of the notes might be restrained from exercising the power of sale in the trust deed.—*Guthrie v. Moore*, 182 N. C. 24, 108 S. E. 334.

374. Rights of holder in due course. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce the payment of the instrument for the full amount thereof against all parties liable thereon.

C. S., s. 3038; Rev., s. 2206; 1899, c. 733, s. 57.

Standing Stone Nat. Bank v. Walser, 162 N. C. 53, 77 S. E. 1006.

Bills and Notes § 443. The holder in due course of a note indorsed to it as collateral security has the legal right to collect it, and may maintain an action thereon against the maker; it not appearing the indorser's debt has been paid.—*American Nat. Bank of Richmond v. Hill*, 169 N. C. 235, 85 S. E. 209.

375. When subject to original defenses. In the hands of any holder other than a holder in due course a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course and who is not himself a party to any fraud or illegality affecting the instrument has all the rights of such former holder in respect of all parties prior to the latter.

C. S., s. 3039; Rev., s. 2207; 1899, c. 733, s. 58.

Bills and Notes § 351. The purchaser of a note after its maturity takes it subject to all defenses available against it in the hands of the payee.—*Causey v. Snow*, 122 N. C. 326, 29 S. E. 359.

Bills and Notes § 351. One taking a note by assignment after maturity takes it with notice of all equities, and other rights of the indorser, and subject to them.—*Sykes v. Everett*, 167 N. C. 600, 83 S. E. 585.

376. Who deemed holder in due course. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in

favor of a party who became bound on the instrument prior to the acquisition of such defective title.

C. S., s. 3040; Rev., s. 2208; 1899, c. 733, s. 59.

Bills and Notes § 497. When there is evidence tending to show fraud in the execution of a note, the burden is on plaintiff to show that he was a bona fide purchaser of the note, and not on the defendants to establish the negative of that proposition.—*Dennison v. Spivey*, 180 N. C. 220, 104 S. E. 370.

Bills and Notes § 497. In an assignee's action on acceptances, defendant having pleaded fraud in execution and introduced evidence, burden was on plaintiff to prove by greater weight of evidence that it was holder in due course for value and without notice.—*Metropolitan Discount Co. v. Baker*, 176 N. C. 546, 97 S. E. 495.

Bills and Notes § 497. In an action by indorsees on notes, establishment of fraud held to cast burden on plaintiffs to show acquisition of notes before maturity in good faith for value, without notice of defect in title of indorser.—*Wilson v. Lewis*, 170 N. C. 47, 86 S. E. 804.

Bills and Notes § 497. Every holder of a note duly executed is prima facie a holder in due course. *Gulf States Steel Co. v. Ford*, 173 N. C. 195, 91 S. E. 844.

Bills and Notes § 497. It is error to place on an indorsee, who has proved the indorsement, the burden of proving that he is a bona fide purchaser; there being no evidence that his title is defective.—*Moon v. Simpson*, 170 N. C. 335, 87 S. E. 118.

Bills and Notes § 497. Where fraud in the procurement of note is pleaded as a defense to the payment of a note, with evidence tending to establish it, the burden of proof is on the plaintiff claiming to be a holder in due course, to show that he purchased in good faith and without notice of any infirmity or defect, for value and before maturity.—*Fidelity Trust Co. v. Whitehead*, 165 N. C. 74, 80 S. E. 1065.

ART. 6. LIABILITIES OF PARTIES.

377. Liability of maker. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

C. S., s. 3041; Rev., s. 2209; 1899, c. 733, s. 60.

378. Liability of drawer. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

C. S., s. 3042; Rev. s. 2210; 1899, c. 733, s. 61.

Bills and Notes § 363. A drawer of a draft, ordinarily standing towards subsequent parties as a general indorser, may, by appropriate words appearing on the paper or by agreement *dehors* the instrument as to person affected with notice, retain the right to arrest payment and likewise restrict his obligation.—*Murchison National Bank v. Dunn Oil Mills Co.*, 150 N. C. 718, 64 S. E. 885.

379. Liability of acceptor. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits (1) existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and (2) the existence of the payee and his then capacity to indorse.

C. S., s. 3043; Rev., s. 2211; 1899, c. 733, s. 62.

Bills and Notes § 85. The draft having been accepted, the drawee became primarily liable.—*National Bank of Asheville v. Bradley*, 117 N. C. 526, 23 S. E. 455.

Banks § 125. A drawee bank is presumed to know the genuineness of the signatures of its depositors, and when it accepts a forged check from another of its depositors and places it to his credit, it is considered as a payment of the check which without anything further appearing, cannot be withdrawn; but where such other depositor is aware of the fact of forgery, indorses the check, and it is accordingly credited to him without knowledge of such facts on the part of the bank, the bank may return the check to such depositor and rightfully charge his account therewith, without reference to any fraudulent intent on his part.—*Woodward v. The Savings & Trust Co.*, 178 N. C. 184, 100 S. E. 304.

380. When person deemed indorser. A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

C. S., s. 3044; Rev., s. 2212; 1899, c. 733, s. 63.

Bills and Notes § 337. In order to show a proper negotiation of a commercial instrument payable to order, so as to shut off equities and defenses existing between the original parties, it must be endorsed by the holder or by some one for him duly authorized, by writing the name of the holder on the instrument itself, usually on the back thereof, or on some paper physically attached thereto at the time of the indorsement was made.—*Critcher v. Ballard*, 180 N. C. 111, 104 S. E. 134.

Bills and Notes § 271. One placing his signature on the back of a negotiable paper is deemed an indorser thereof, and under the express terms of the statute should "clearly indicate by appropriate words his intention to be bound in some other capacity," when such exists, in order for him to avail himself thereof as a defense in an action brought by a holder in due course.—*The Meyers Co. v. Battle*, 170 N. C. 168, 86 S. E. 1034.

Evidence § 423.—Parol evidence is inadmissible to show that defendant, who had indorsed a note by writing his name across the back, signed as an original promisor.—*Ibid*.

Bills and Notes § 396. One indorsing a note in blank before delivery

without indicating his intention to be bound otherwise, is an "indorser," who, not being given notice of nonpayment and dishonor, is discharged.—*J. W. Perry Co. v. Taylor Bros.*, 148 N. C. 362, 62 S. E. 423.

Bills and Notes § 281. Where a payee or regular indorsee of a note writes his name on the back, the law, as between him and a bona fide holder for value and without notice, implies that he intended to assume the liability of an indorser.—*Sykes v. Everett*, 167 N. C. 600, 83 S. E. 585.

Bills and Notes § 281. An indorser undertakes to pay if the debtor does not, after due notice of dishonor.—*Ibid.*

381. Liability of irregular indorser. Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery he is liable as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties; (2) if the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer; (3) if he signs for the accommodation of the payee he is liable to all parties subsequent to the payee.

C. S., s. 3045; Rev., s. 2213; 1899, c. 733, s. 64.

Bills and Notes § 396. One indorsing a note in blank before delivery without indicating his intention to be bound otherwise, is an "indorser," who, not being given notice of nonpayment and dishonor, is discharged.—*J. W. Perry Co. v. Taylor Bros.*, 148 N. C. 362, 62 S. E. 423.

382. Warranty, where negotiation by delivery. Every person negotiating an instrument by delivery or by a qualified indorsement warrants (1) that the instrument is genuine and in all respects what it purports to be; (2) that he has a good title to it; (3) that all prior parties had capacity to contract; (4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities other than bills and notes.

C. S., s. 3046; Rev., s. 2214; 1899, c. 733, s. 65.

383. Liability of general indorser. Every indorser who endorsed without qualification warrants to all subsequent holders in due course (1) the matters and things mentioned in subdivisions one, two and three of the next preceding section; and (2) that the instrument is at the time of this indorsement valid and subsisting. And in addition he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according

to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it.

C. S., s. 3047; Rev., s. 2215; 1899, c. 733, s. 66.

Bills and Notes § 375.—The principle that a note for a gambling debt cannot be collected does not extend to suits by an innocent indorsee for value and holder in due course, against the indorser on his contract of indorsement, which is by virtue of above section, a contract independent of the instrument on which it appears, and guarantees that the note is a valid and subsisting obligation.—*Wachovia Bank & Trust Co. v. Crafton*, 181 N. C. 404, 107 S. E. 316.

Bills and Notes § 280. When Young endorsed the note, although past due, to plaintiff, he warranted that it was genuine—that he had a good title to it; that he had no knowledge of any fact which would impair its validity or render it valueless, and that on presentment it would be paid. Hence, his title to the note and his right to demand all securities which Young held are clear.—*Smith v. Godwin*, 145 N. C. 242, 58 S. E. 1089.

Bills and Notes § 296. The provisions made as to warranties which prevail in case of unqualified indorsements refer to lawful transactions, and do not relate to transactions coming within the meaning of our usury laws.—*Sedbury v. Duffy*, 158 N. C. 432, 74 S. E. 355.

Bills and Notes § 280. A parol agreement made between an indorser of a negotiable instrument in blank and his transferee may be shown between the immediate parties to the transaction by parol evidence, and is not objectionable as a contradiction of the liability of an indorser implied by law, except as to subsequent holders in due course without notice.—*Sykes v. Everett*, 167 N. C. 600, 83 S. E. 585.

Bills and Notes § 281. Where the payee (whether original or by a previous indorsement) of a note assigns or transfers it by indorsement, he becomes simply an indorser and liable as a surety, unless by the terms of the assignment he limits his liability.—*Davidson v. Powell*, 114 N. C. 575, 19 S. E. 601.

Bills and Notes § 305. In an action upon an indorsement of a note with the agreement that the indorsee should exhaust the collateral before recourse to the indorser, where there was no allegation or proof that the indorser made any false representation as to the time within which the collateral might be realized, his remark as to the time held immaterial.—*Sykes v. Everett*, 167 N. C. 600, 83 S. E. 585.

NOTE: Sometimes a person or corporation may become liable because of representations made and not by indorsement.

An officer of defendant railroad company was authorized by its directors to sell certain bonds which had been issued to it by a town to aid in the construction of its road, and pursuant to such authority sold them to the president of plaintiff bank acting on its behalf. Prior to and during the negotiations, such officer expressly stated in writing to the purchaser that the bonds were valid and had been so adjudged by a court of the state, and the purchase was made in reliance on such representation. The bonds were in fact void for want of power in the town to issue them, and were subsequently so adjudged. Held, that the statement of their validity made as an inducement to the sale was an express warranty that they had a valid legal existence as securities which was binding on defendant, and that plaintiff was entitled to recover from defendant thereon the consideration paid

therefor.—Union Bank of Richmond v. Oxford & C. L. R. Co., 74 C. C. A. 323, 143 Fed. 193. In this case, the Supreme Court of the United States denied a petition for writ of certiorari, 206 U. S. 565, 51 L. Ed. 1191.

384. Liability of indorser, where paper negotiable by delivery.

Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

C. S. s. 3048; Rev. s. 2216; 1899, c. 733, s. 67.

385. Order in which indorsers are liable. As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsers who indorse are deemed to indorse jointly and severally.

C. S., s. 3049; Rev., s. 2217; 1899, c. 733, s. 68.

Bills and Notes § 306. A payee who has been compelled to pay a note on his indorsement cannot enforce reimbursement from a subsequent indorser.—Lynch v. Loftin, 153 N. C. 270, 69 S. E. 143.

—Bills and Notes § 306. In a suit by the payee of a note to recover from a subsequent indorser the amount of a judgment obtained against the payee as an indorser, a change in the prima facie order of liability of indorsers is not shown by allegation of a contract between the maker and such subsequent indorser whereby the note was to be discharged, in the absence of a showing that the maker executed the contract on his part.—Ibid.

Bills and Notes § 306. If the maker of a note by performing an agreement with a subsequent indorser discharged and paid the note, the payment inured to the benefit of the payee, as affecting his liability as indorser, and such indorser would be required to account to the payee for the consideration received.—Ibid.

Bills and Notes § 308. One who obtains possession of negotiable paper, after indorsing it, is restored to his original position, and cannot hold intermediate parties who could look to him. It is equally true that one who derives possession of the paper from him, with notice of this fact, cannot hold such intermediate indorsers liable; and when such indorsements are in blank, oral testimony is admissible to show the relation in which they stand.—Adrian v. McCaskill, 103 N. C. 182, 9 S. E. 284.

386. Liability of agent or broker. Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section three thousand and forty-six (herein 383), unless he discloses the name of his principal and the fact that he is acting only as agent.

C. S., s. 3050; Rev., s. 2218; 1899, c. 733, s. 69.

ART. 7. PRESENTMENT FOR PAYMENT.

387. Effect of want of demand on principal debtor. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is by

its terms payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

C. S., s. 3051; Rev., s. 2219; 1899, c. 733, s. 70.

Bills and Notes § 403. Presentment and demand at the bank at which a note is payable is necessary to charge an indorser, except where the maker has no funds at the bank to meet it.—*Meyers Co. v. Battle*, 170 N. C. 168, 86 S. E. 1034.

Bills and Notes § 403. The holder of a check cannot sue the drawer thereon till it has been presented to the drawer, and payment refused.—*Commercial Nat. Bank v. First Nat. Bank*, 118 N. C. 783, 24 S. E. 524.

Bills and Notes § 403. An indorsement on a note renders the indorser liable as a surety; and no demand on the maker, or notice to the indorser of such demand, is necessary to bind him.—*First Nat. Bank v. Eureka Lumber Co.*, 123 N. C. 24, 31 S. E. 348.

Bills and Notes § 403. Where, on trial of an action, a material fact was whether a draft had been presented to plaintiff for acceptance and payment and it appeared that plaintiff, having received notice that a draft had been drawn on him by defendant, applied at the bank where he usually received drafts but the defendant's draft had not been received and plaintiff testified that he was employed at a cotton gin; that his duties were outside the office and that he had no desk there but that his place of business was at his residence and that the draft had never been presented to him; while the bank collector testified that he took the draft to the gin for acceptance three times, left a printed notice and notified plaintiff's son. Held, that whether the draft had been duly presented was a question for the jury.—*Burruss v. Life Ins. Co. of Va.*, 121 N. C. 62, 28 S. E. 62; *J. W. Perry Co. v. Taylor Bros.*, 148 N. C. 362, 62 S. E. 423.

388. Presentment, where the instrument is not payable on demand. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

C. S., s. 3052; Rev., s. 2220; 1899, c. 733, s. 71.

389. What constitutes a sufficient presentment. Presentment for payment to be sufficient must be made (1) by the holder or by some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place as herein defined; (4) to the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

C. S., s. 3053; Rev., s. 2221; 1899, c. 733, s. 72.

Bills and Notes § 399. The presentment of a bill of exchange or draft must be made to the drawee or acceptor, or to an authorized agent.—*Burruss v. Life Ins. Co. of Va.*, 124 N. C. 9, 32 S. E. 323.

390. Place of presentment. Presentment for payment is made at the proper place (1) where a place of payment is specified in the instrument and it is there presented; (2) where no place of payment is specified, but the address of the person to make the payment is given in the instrument, and it is there presented; (3) where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment; (4) in any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

C. S., s. 3054; Rev., s. 2222; 1899, c. 733, s. 73.

Burruss v. Life Ins. Co. of Va., 124 N. C. 9, 32 S. E. 323; *Sullivan v. Mitchell*, 4 N. C. 93.

391. Instrument must be exhibited. The instrument must be exhibited to the person from whom payment is demanded, and, when it is paid, must be delivered up to the party paying it.

C. S., s. 3055; Rev., s. 2223; 1899, c. 733, s. 74.

392. Presentment where instrument payable at bank. Where the instrument is payable at a bank presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

C. S., s. 3056; Rev., s. 2224; 1899, c. 733, s. 75.

Bills and Notes § 403. Presentment and demand at the bank at which a note is payable is necessary to charge an indorser, except where the maker has no funds at the bank to meet it.—*Meyers Co. v. Battle*, 170 N. C. 168, 86 S. E. 1034.

Bills and Notes § 403. Where an instrument is payable at a particular bank, presentment must be made at that bank.—*Sullivan v. Mitchell*, 4 N. C. 93.

393. Presentment where principal debtor is dead. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found.

C. S., s. 3057; Rev., s. 2225; 1899, c. 733, s. 76.

394. Presentment to persons liable as partners. Where the persons primarily liable on the instrument are liable as partners

and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

C. S., s. 3058; Rev., s. 2226; 1899, c. 733, s. 77.

Bills and Notes § 410. Presentment to one member of the firm, is a presentment to all.—*Elliott v. White*, 51 N. C. 98.

395. Presentment to joint debtors. Where there are several persons not parties primarily liable on the instrument and no place of payment is specified, presentment must be made to them all.

C. S., s. 3059; Rev., s. 2227; 1899, c. 733, s. 78.

396. When presentment not required to charge the drawer. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

C. S., s. 3060; Rev., s. 2228; 1899, c. 733, s. 79.

Bills and Notes § 394. Generally, if the drawer of a bill has no reasonable ground to expect it to be honored, the holder is not bound to strict presentment and notice; but if the drawer has funds in the hands of the drawee, he has a right to expect his bill to be honored by applying thereto the funds belonging to the drawer or otherwise; and the drawer is entitled to presentment of his bill in reasonable time and strict notice if dishonored, although the drawer knew or had reason to believe when he drew the bill that the drawee was insolvent.—*Cedar Falls Co. v. Wallace Bros.*, 83 N. C. 225.

397. When presentment not required to charge the indorser. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

C. S., s. 3061; Rev., s. 2229; 1899, c. 733, s. 80.

Bills and Notes § 397. Presentment and demand at the bank at which a note is payable is necessary to charge an indorser, except where the maker has no funds at the bank to meet it.—*Meyers Co. v. Battle*, 170 N. C. 168, 86 S. E. 1034; *Cedar Falls Co. v. Wallace Bros.*, 83 N. C. 225.

398. When delay in presentment is excused. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

C. S., s. 3062; Rev., s. 2230; 1899, c. 733, s. 81.

399. When presentment may be dispensed with. Presentment for payment is dispensed with (1) where after the exercise of

reasonable diligence presentment as required by this chapter cannot be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied.

C. S., s. 3063; Rev., s. 2231; 1899, c. 733, s. 82.

Guaranty § 72. Where county which accepted bid for bonds, agent of bidder indorsing checks and making his check to county as security, intending thereby to guaranty bid, delayed presentation of instruments for payment at agent's special request, he cannot complain when sued, that demand was not made earlier.—Caldwell County v. George, 176 N. C. 602, 97 S. E. 507.

400. When instrument dishonored by nonpayment. The instrument is dishonored by nonpayment when (1) it is duly presented for payment and payment is refused or cannot be obtained; or (2) presentment is excused and the instrument is overdue and unpaid.

C. S., s. 3064; Rev., s. 2232; 1899, c. 733, s. 83.

401. Liability of persons secondarily liable when instrument dishonored. Subject to the provisions of this chapter, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

C. S., s. 3065; Rev., s. 2233; 1899, c. 733, s. 84.

402. Time of maturity. Every negotiable instrument is payable at the time fixed therein without grace, except as allowed by the succeeding section. When the day of maturity falls upon Sunday or a holiday the instrument is payable on the next succeeding business day.

C. S., s. 3066; Rev., s. 2234; 1899, c. 733, s. 85; 1907, c. 897; 1909, c. 800, s. 1.

403. When days of grace allowed. All bills of exchange payable within the state, at sight, in which there is an express stipulation to that effect and not otherwise, shall be entitled to days of grace as the same are allowed by the custom of merchants on foreign bills of exchange payable at the expiration of a certain period after date or sight, but no days of grace shall be allowed on any bill of exchange, promissory note, or draft payable on demand.

C. S., s. 3067; Rev., s. 2235; Code, s. 43; 1905, c. 327; 1907, c. 861.

404. How time is computed. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment.

C. S., s. 3068; Rev., s. 2236; 1899, c. 733, s. 86.

405. Rule where instrument is payable at bank. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

C. S., s. 3069; Rev., s. 2237; 1899, c. 733, s. 87.

Banks and Banking § 155. Where bank at which note was payable received it for collection, obtained maker's order to charge it to his account, and kept it until it went into receivership, held, that there was payment.—*Peaslee-Gaulbert Co. v. Dixon*, 172 N. C. 411, 90 S. E. 421. And such bank has no right, without special authority, to accept a part payment.—*Ibid*.

Bills and Notes § 15. A check is a bill of exchange, and may more particularly be defined as a written order on a bank or banker, purporting to be drawn against a deposit of funds, for the payment, at all events, of a sum of money to a certain person therein named, or to him or his order, or to bearer, and payable on demand.—*Standard Trust Co. v. Commercial Nat. Bank*, 166 N. C. 112, 81 S. E. 1074.

406. What constitutes payment in due course. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

C. S., s. 3070; Rev., s. 2238; 1899, c. 733, s. 88.

ART. 8. NOTICE OF DISHONOR.

407. To whom notice of dishonor must be given. Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

C. S., s. 3071; Rev., s. 2239; 1899, c. 733, s. 89.

Bills and Notes § 396. An indorser of a negotiable instrument is entitled to notice of dishonor under our statute, and upon failure of notice his liability thereon is discharged.—*Barber v. W. M. Absher Co.*, 175 N. C. 602, 96 S. E. 43.

Bills and Notes § 396. An indorser is entitled to notice of dishonor, and is not liable unless such notice is given.—*Horton v. Wilson*, 175 N. C. 533, 95 S. E. 904.

Bills and Notes § 395. The indorser of a nonnegotiable note was not entitled to notice of dishonor.—*Newland v. Moore*, 173 N. C. 728, 92 S. E. 367.

Bills and Notes § 397. That a maker of a promissory note executed a mortgage securing the indorsers thereon does not remove the necessity of notice of dishonor as to them.—*Barber v. W. M. Absher Co.*, 175 N. C. 602, 96 S. E. 43.

Bills and Notes § 414. Indorser is liable conditionally, and does not undertake to pay absolutely, but only after notice of dishonor; and is entitled to notice of dishonor.—*Edwards v. Jefferson Standard Life Ins. Co.*, 173 N. C. 614, 92 S. E. 695.

Bills and Notes § 416. Telling indorser's son, the day before a note fell due, that it would not be paid, and that indorser would be held liable, is not notice of dishonor.—*Horton v. Wilson*, 175 N. C. 533, 95 S. E. 904.

Bills and Notes § 395. An indorser of a past-due nonnegotiable instrument held not entitled to notice of dishonor.—*Johnson v. Lassiter*, 155 N. C. 47, 71 S. E. 23.

Bills and Notes § 414. Accommodation indorsers of a note are entitled to notice of dishonor.—*Houser v. Fayssoux*, 168 N. C. 1, 83 S. E. 692.

Bills and Notes § 414. That accommodation indorsers of a note are directors of the corporation, which is the maker, and constitute a majority of its board of directors, does not deprive them of the right to notice of dishonor.—*Ibid*.

Bills and Notes § 396. One indorsing a note in blank before delivery, without indicating his intention to be bound otherwise, is an indorser, who, not being given notice of dishonor and nonpayment, is discharged.—*J. W. Perry Co. v. Taylor Bros.*, 148 N. C. 362, 62 S. E. 423.

Bills and Notes § 510. In an action by a bank against the indorser of a note, the custom of the bank as to the character and time of sending their notices of nonpayment is admissible.—*Fourth Nat. Bank of Fayetteville v. Wilson*, 168 N. C. 557, 84 S. E. 866.

Banks and Banking § 171. If plaintiff bank, after receiving a check for collection and after giving defendant trust company, sender, credit therefor, delayed for 40 days to inform defendant that check had been lost or not paid, and the drawer in the meantime became insolvent, plaintiff cannot recover from defendant the sum lost by such negligent delay irrespective of whether drawee bank would have paid the check if promptly presented.—*American Nat. Bank v. Savannah Trust Co.*, 177 N. C. 254, 98 S. E. 595.

Bills and Notes § 395. A surety on a note is not entitled to notice of nonpayment.—*Rouse v. Wooten*, 140 N. C. 557, 53 S. E. 430.

408. By whom notice given. The notice may be given by or on behalf of the holder or by or on behalf of any party to the instrument who might be compelled to pay to the holder, and who upon taking it up, would have a right to reimbursement from the party to whom notice is given.

C. S., s. 3072; Rev., s. 2240; 1899, c. 733, s. 90.

409. Notice given by agent. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

C. S., s. 3073; Rev., s. 2241; 1899, c. 733, s. 91.

410. Effect of notice given on behalf of holder. Where notice is given by or on behalf of the holder, it inures to the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

C. S., s. 3074; Rev., s. 2242; 1899, c. 733, s. 92.

411. Effect, where notice is given by party entitled thereto. Where notice is given by or on behalf of a party entitled to give

notice it inures to the benefit of the holder and all parties subsequent to the party by whom notice is given.

C. S., s. 3075; Rev., s. 2243; 1899, c. 733, s. 93.

412. When agent may give notice. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he give notice to his principal he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

C. S., s. 3076; Rev., s. 2244; 1899, c. 733, s. 94.

413. When notice sufficient. A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate it unless the party to whom the notice is given is in fact misled thereby.

C. S., s. 3077; Rev., s. 2245; 1899, c. 733, s. 95.

414. Form of notice. The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

C. S., s. 3078; Rev., s. 2246; 1899, c. 733, s. 96.

415. To whom notice may be given. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

C. C., s. 3079; Rev., s. 2247; 1899, c. 733, s. 97.

416. Notice when party is dead. When any party is dead and his death is known to the party giving notice, the notice must be given to a personal representative if there be one, and if with reasonable diligence he can be found. If there is no personal representative, notice may be sent to the last residence or last place of business of the deceased.

C. S., s. 3080; Rev., s. 2248; 1899, c. 733, s. 98.

417. Notice to partners. When the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

C. S., s. 3081; Rev., s. 2249; 1899, c. 733, s. 99.

418. Notice to persons jointly liable. Notice to joint parties who are not partners must be given to each of them unless one of them has authority to receive such notice for the others.

C. S., s. 3082; Rev., s. 2250; 1899, c. 733, s. 100.

419. Notice to bankrupt. Where a party has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of his creditors, notice may be given either to the party himself or to his trustee or assignee.

C. S., s. 3083; Rev., s. 2251; 1899, c. 733, s. 101.

420. Time within which notice must be given. Notice may be given as soon as the instrument is dishonored, and unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter.

C. S., s. 3084; Rev., s. 2252; 1899, c. 733, s. 102.

421. Notice where parties reside in the same place. When the person giving and the person to receive notice reside in same place, notice must be given within the following times: (1) If given at the place of business of the person to receive notice it must be given before the close of business hours on the day following; (2) if given at his residence it must be given before the usual hours of rest on the day following; (3) if sent by mail it must be deposited in the postoffice in time to reach him in the usual course on the day following.

C. S., s. 3085; Rev., s. 2253; 1899, c. 733, s. 103.

422. Notice where parties reside in different places. Where the person giving and the person to receive notice reside in different places the notice must be given within the following times: (1) If sent by mail it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) if given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail if it had been deposited in the postoffice within the time specified in the last subdivision.

C. S., s. 3086; Rev., s. 2254; 1899, c. 733, s. 104.

Bills and Notes § 416. Where an accepted draft is not paid at maturity notice must, at the latest, be mailed to those secondarily liable on the day after the dishonor, if there is a daily mail which does not leave before business hours.—*Nat. Bank of Asheville v. Bradley*, 117 N. C. 526, 23 S. E. 455.

Bills and Notes § 416. The personal guaranty of a school committeeman is discharged by unreasonable delay of more than sixty days in presenting a sight draft for payment.—*First Nat. Bank of Gastonia v. Warlick*, 125 N. C. 593, 34 S. E. 687.

423. When sender deemed to have given due notice. Where notice of dishonor is duly addressed and deposited in the post-

office the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

C. S., s. 3087; Rev., s. 2255; 1899, c. 733, s. 105.

424. What constitutes deposit in postoffice. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter-box under the control of the postoffice department.

C. S., s. 3088; Rev., s. 2256; 1899, c. 733, s. 106.

425. Time of notice to antecedent parties. Where a party receives notice of dishonor he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

C. S., s. 3089; Rev., s. 2257; 1899, c. 733, s. 107.

426. Where notice must be sent. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) Either to the postoffice nearest to his place of residence or to the postoffice where he is accustomed to receive his letters; or (2) if he lives in one place and has his place of business in another, notice may be sent to either place; or (3) if he be sojourning in another place notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this chapter it will be sufficient, though not sent in accordance with requirements of this section.

C. S., s. 3090; Rev., s. 2258; 1899, c. 733, s. 108.

Bills and Notes § 414. When the drawer of a bill dates a note at a particular place, as for instance "Danville," notice to him of the dishonor of the bill, directed to him at that place, may be sufficient. But it is otherwise as to the indorsee, who does not designate in his indorsement his place of residence, either generally or specially. The general rule is, that notice of the dishonor of a bill of exchange or promissory note indorsed, where the parties live in different places, must be sent by the next post, directed to the place of the party's residence.—*Denny v. Palmer*, 27 N. C. 610.

Bills and Notes § 414. The rule that notice to a distant indorser should be sent to the postoffice nearest to his residence, was founded on the presumption that the information would most speedily be given in such way; but the rule is subject to modification; and the true inquiry is, was the notice directed to that postoffice which was most likely to impart to the indorser the earliest intelligence, though it may not be the nearest; if it was, it is sufficient.—*Bank of the U. S. v. Lane*, 10 N. C. 453.

427. Waiver of notice. Notice of dishonor may be waived either before the time of giving notice has arrived or after the

omission to give due notice, and the waiver may be express or implied.

C. S., s. 3091; Rev., s. 2259; 1899, c. 733, s. 109.

Bills and Notes § 498. In an action on a promissory note against an indorser, the burden is on plaintiff to show notice of dishonor to the indorser or waiver of such notice by him.—*Washington Horse Exch. Co. v. Bonner*, 180 N. C. 20, 103 S. E. 907.

Bills and Notes § 422. An indorser of a note may waive notice of dishonor before or after the maturity of the instrument, so that a letter tending to show that indorser agreed to collect the note is competent evidence on the issue of waiver of notice.—*Ibid*.

Bills and Notes § 422. An indorser of a note before maturity who, by its terms, consents to any extension of time thereon that may be granted, and waives notice of such extension, waives notice of nonpayment and dishonor at the end of the extension.—*First Nat. Bank of Henderson v. Johnson*, 169 N. C. 526, 86 S. E. 360.

Bills and Notes § 422. Although protest is not necessary on an inland bill, yet its waiver in such case, is construed to signify as much as when applied to foreign bills. So, where protest was waived on inland bill, and no notice was given of its nonacceptance and nonpayment to the indorsers, held, that such notice was waived by the waiver of protest, and the indorsers were liable.—*Shaw Bros. v. McNeill*, 95 N. C. 535.

Bills and Notes § 422. A promise or a partial payment by an indorser of a bill of exchange, after he has been released from liability by the neglect of the holder to notify him of its dishonor, to pay the whole, or even a part, of the sum named in the bill, if made with a full knowledge that he has been released by such neglect, will operate as a waiver, and bind him to the payment of the whole sum named in the bill.—*Ibid*.

Bills and Notes § 422. If the indorser of a bill of exchange, with knowledge of the material facts which discharge him, promises to pay such bill, he is bound to do so.—*Lilly v. Petteway*, 73 N. C. 358.

428. Who affected by waiver. Where the waiver is embodied in the instrument itself it is binding upon all parties, but where it is written above the signature of an indorser it binds him only.

C. S., s. 3092; Rev., s. 2260; 1899, c. 733, s. 110.

Bills and Notes § 422. An indorser of a note before maturity who, by its terms consents to any extension of time thereon that may be granted, and waives notice of such extension, waives notice of nonpayment and dishonor at the end of such extension.—*First Nat. Bank of Henderson v. Johnson*, 169 N. C. 526, 86 S. E. 360.

429. Waiver of protest. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of a presentment and notice of dishonor.

C. S., s. 3093; Rev., s. 2261; 1899, c. 733, s. 111.

Bills and Notes § 422. Even in foreign bills, the protest may be waived, and when this is done, it also waives presentment and notice.—*Shaw Bros. v. McNeill*, 95 N. C. 535.

Bills and Notes § 422. Where a settling partner, after the dissolution of

the firm, gives a draft in payment of a partnership debt, he cannot waive protest so as to bind his former co-partner, especially when the latter has been a dormant member.—*Mauney & Son v. Coit*, 80 N. C. 300.

430. When notice is dispensed with. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

C. S., s. 3094; Rev., s. 2262; 1899, c. 733, s. 112.

Runyon v. Montfort, 44 N. C. 371.

431. Delay in giving notice. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

C. S., s. 3095; Rev., s. 2263; 1899, c. 733, s. 113.

432. When notice need not be given to drawer. Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and the drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment.

C. S., s. 3096; Rev., s. 2264; 1899, c. 733, s. 114.

Bills and Notes § 414. Generally, if the drawer of a bill has no reasonable ground to expect it to be honored, the holder is not bound to strict presentment and notice; but if the drawer has funds in the hands of the drawee, he has a right to expect his bill to be honored by applying thereto the funds belonging to the drawer or otherwise; and the drawer is entitled to presentment of his bill in reasonable time and strict notice if dishonored, although the drawer knew or had reason to believe when he drew the bill that the drawee was insolvent.—*Cedar Falls Co. v. Wallace Bros.*, 83 N. C. 225.

Bills and Notes § 414. A drawer of a bill, who has no funds in the hands of the drawee, is liable without notice, on the ground of fraud.—*Denny v. Palmer*, 27 N. C. 610.

Bills and Notes § 496. The burden of proving that a draft was in fact accommodation paper, and the drawer, therefore, not entitled to notice of dishonor, is upon the holder.—*National Bank v. Bradley*, 117 N. C. 526, 23 S. E. 455.

433. When notice need not be given to indorser. Notice of dishonor is not required to be given to an indorser in either of the following cases: (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was

aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is presented for payment; (3) where the instrument was made or accepted for his accommodation.

C. S., s. 3097; Rev., s. 2265; 1899, c. 733, s. 115.

Bills and Notes § 414. Although at the time of the indorsement of a note, the indorsers had reason to believe, and did believe, that the note would not be paid by the maker, this circumstance does not dispense with the necessity of a due notice.—*Denny v. Palmer*, 27 N. C. 610.

But a drawer of a bill, who has no funds in the hands of the drawee, is liable without notice on the ground of fraud. If a note is made for the accommodation of the payee, and he receives the money for it, he is not entitled to notice. If a maker of a note places effects in the hands of the indorser to meet the note, the latter is not entitled to notice.—*Ibid*.

434. Notice of nonpayment where acceptance refused. Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary unless in the meantime the instrument has been accepted.

C. S., s. 3098; Rev., s. 2266; 1899, c. 733, s. 116.

435. Effect of omission to give notice of nonacceptance. An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

C. S., s. 3099; Rev., s. 2267; 1899, c. 733, s. 117.

436. When protest need not be made; when it must be made. Where any negotiable instrument has been dishonored, it may be protested for nonacceptance or nonpayment as the case may be, but protest is not required except in the case of foreign bills of exchange.

C. S., s. 3100; Rev., s. 2268; 1899, c. 733, s. 118.

Bills and Notes § 411. In the case of an inland bill protest is not necessary but notice of dishonor must be given with the same promptness as of a protest.—*Nat. Bank of Asheville v. Bradley*, 117 N. C. 526, 23 S. E. 455.

Bills and Notes § 411. Protest is not necessary to fix the drawee and indorsers of inland bills of exchange with liability, although it is necessary in the case of foreign bills.—*Shaw Bros. v. McNeill*, 95 N. C. 535.

NOTE: It is lawful for a note or bond to provide for waiver of protest and of notice of nonpayment, dishonor and protest, and for waiver of all other notices required by law to be given to sureties and indorsers. The note may also lawfully contain the consent of makers, sureties and indorsers to remain bound for the payment of the note and interest so long as any part thereof may remain unpaid; notwithstanding any extension of time or indulgence which may be granted by payee or assigns to the maker thereof. A clause may be inserted giving the consent of makers and indorsers to any such extensions of time for payment of note, or other indulgences, as may thereafter be granted to the maker of said note. Our courts have upheld all these clauses.

But there are three clauses sometimes inserted in a note or bond, which are distinctly objectionable. They are waiver of homestead and personal property exemption; agreement to pay attorney's fees; and agreement to consent to entry of judgment. None of these clauses should be included in any note made or negotiated in this state. They are not only void and unenforceable in court, but there are other incidents which make the use of these clauses wholly undesirable.

ART. 9. DISCHARGE.

437. How instrument discharged. A negotiable instrument is discharged (1) by payment in due course by or on behalf of the principal debtor; (2) by payment in due course by the party accommodated, where the instrument is made or accepted for accommodation; (3) by the intentional cancellation thereof by the holder; (4) by any other act which will discharge a simple contract for the payment of money; (5) when the principal debtor becomes the holder of the instrument at or after maturity in his own right.

C. S., s. 3101; Rev., s. 2269; 1899, c. 733, s. 119.

Bills and Notes § 437. Giving up a note to the maker, to be destroyed, held as complete a discharge of his liability as if he had paid it in money.—*Miller v. Tharel*, 75 N. C. 148.

438. Discharge of person secondarily liable. A person secondarily liable on the instrument is discharged (1) by any act which discharges the instrument; (2) by the intentional cancellation of his signature by the holder; (3) by the discharge of a prior party; (4) by a valid tender of payment made by a prior party; (5) by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved; (6) by any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved.

C. S., s. 3102; Rev., s. 2270; 1899, c. 733, s. 120.

Bills and Notes § 437. In an action upon a negotiable instrument the defendants on its face being joint makers, the mere fact that the plaintiff had told one of the defendants, without the knowledge of the other, "that he would take up and carry the note until fall," is not an extension of payment for a fixed and definite period," which would operate as a release to such other from liability.—*Roberson-Ruffin Co. v. Spain*, 173 N. C. 23, 91 S. E. 361.

Bills and Notes § 491. Where one whose name appeared on a note admitted execution and nonpayment, the burden is upon him to prove any matter in release.—*Ibid*.

Bills and Notes § 437. There is no implied authority given to a cashier

of a bank, by virtue of his office, to release, without consideration, one of the joint makers from his liability on a note given to the bank; and when it is shown that the cashier agreed that if one of the two makers of a partnership note paid a certain amount upon a well-secured note given by the other individually to the bank, such other maker would be released from all liability on the joint note sued on, the transaction is without consideration and the bank is not bound thereby.—*Nat. Bank of Lumberton v. Lennon*, 170 N. C. 10, 86 S. E. 715.

Bills and Notes § 430. Renewal note is not payment of original indebtedness, unless so intended.—*Nat. Bank of Graham v. Hall*, 174 N. C. 477, 93 S. E. 981.

Bills and Notes § 396. One indorsing note in blank before delivery without indicating his intention to be bound otherwise, is an "indorser" who, not being given notice of nonpayment and dishonor, is discharged.—*J. W. Perry Co. v Taylor Bros.*, 148 N. C. 362, 62 S. E. 423.

Bills and Notes § 256. Surrender of collateral deposited with the holder by the maker of a note to secure it, without the consent of an accommodation indorser, operates to release the indorser *pro tanto*.—*Bank of Fayetteville v. Nimocks*, 124 N. C. 352, 32 S. E. 717.

Principal and Surety § 115. Where plaintiffs either owning or having a lien on vehicles in bankrupt's possession, the value of which largely exceeded renewal notes given for the price on which defendants were sureties, voluntarily discharged the lien and released the vehicles to bankrupt's trustee, defendants were discharged from liability on the notes.—*Brown Carriage Co. v. Dowd*, 155 N. C. 307, 71 S. E. 721.

Bills and Notes § 437. Agreement by holder of note with maker and with others by which he was to credit payment of the balance by such other parties, under which he withheld a deed executed to one of the parties until payment of that party's share, held not to amount to a discharge of the maker before payment as agreed.—*Ponder v. Green*, 161 N. C. 50, 76 S. E. 632.

439. Right of party paying instrument. When the instrument is paid by a party secondarily liable thereon it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except (1) where it is payable to the order of the third person and has been paid by the drawer; and (2) where it was made or accepted for accommodation and has been paid by the party accommodated.

C. S., s. 3103; Rev., s. 2271; 1899, c. 733, s. 121.

Bills and Notes § 440. The person secondarily liable may pay the note and sue the principal, or give notice to the holder to sue.—*Roberson-Ruffin Co. v. Spain*, 173 N. C. 23, 91 S. E. 361.

Bills and Notes § 440. The maker of a note who has paid it becomes the owner thereof and is entitled to its possession, as between the immediate parties, and may maintain his action therefor.—*Walter v. Earnhardt*, 171 N. C. 731, 88 S. E. 753.

Bills and Notes § 440. An indorser who pays off and discharges the note

of his principal can only recover from the latter the amount actually paid by him.—*Pace v. Robertson*, 65 N. C. 550.

440. Renunciation by holder. The holder may expressly renounce his rights against any party to the instrument before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

C. S., s. 3104; Rev., s. 2272; 1899, c. 733, s. 122.

441. Unintentional cancellation; burden of proof. A cancellation made unintentionally or under a mistake or without the authority of the holder is inoperative, but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.

C. S., s. 3105; Rev., s. 2273; 1899, c. 733, s. 123.

442. Effect of alteration of instrument. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration he may enforce payment thereof according to its original tenor.

C. S., s. 3106; Rev., s. 2274; 1899, c. 733, s. 124.

Bills and Notes § 378. The legal acceptance of the term "an alteration in writing" implies a change made after its execution, and while an erasure or interlineation may be an alteration, it is not such if made before the final execution of the writing.—*Wicker v. Jones*, 159 N. C. 102, 74 S. E. 801.

Bills and Notes § 378. The addition of the words "at ten per cent" to a bond without consent of the parties thereto, is a material alteration and vacates the same; and where such alteration is made, a presumption of fraud arises and remains until rebutted.—*Long v. Mason*, 84 N. C. 16.

Bills and Notes § 378. The alteration of a bill or note in a material part vacates the bill or note, except as between the parties consenting to such alteration.—*Davis v. Coleman*, 29 N. C. 424.

Bills and Notes § 378. Cutting off the name of one of the makers of a promissory note, and substituting another, is a material alteration.—*Ibid.*

Bills and Notes § 378. The addition of the words "in specie" after the word "dollars" in a sealed note is a material alteration; and when done by the principal therein, in the absence of the surety and without his consent, avoids such note as to the latter.—*Darwin v. Rippey*, 63 N. C. 318.

443. What constitutes a material alteration. Any alteration

which changes (1) the date; (2) the sum payable either for principal or interest; (3) the time or place of payment; (4) the number or the relation of the parties; (5) the medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

C. S., s. 3107; Rev., s. 2275; 1899, c. 733, s. 125.

Bills and Notes § 378. Cutting off the name of one of the makers of a promissory note, and substituting another, is a material alteration.—*Davis v. Coleman*, 29 N. C. 424.

Bills and Notes § 378. The addition of the words "in specie" after the word "dollars" in a sealed note is a material alteration; and when done by the principal therein, in the absence of the surety and without his consent, avoids such note as to the latter.—*Darwin v. Rippey*, 63 N. C. 318.

Bills and Notes § 378. Prefixing the words "Pleasant Valley, S. C.," did not materially alter the note.—*Houston v. Potts*, 64 N. C. 33.

ART. 10. BILLS OF EXCHANGE.

444. Bill of exchange defined. A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

C. S., s. 3108; Rev., s. 2276; 1899, c. 733, s. 126.

Banks and Banking § 98. An "acceptance" is a bill of exchange.—*Sherrill v. American Trust Co.*, 176 N. C. 591, 97 S. E. 471; *Standard Trust Co. v. Commercial Nat. Bank*, 166 N. C. 112, 81 S. E. 1074; *Johnson v. Laster*, 155 N. C. 47, 71 S. E. 23.

445. Bill not an assignment of funds in hands of drawee. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

C. S., s. 3109; Rev., s. 2277; 1899, c. 733, s. 127.

446. Bill addressed to more than one drawee. A bill may be addressed to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or in succession.

C. S., s. 3110; Rev., s. 2278; 1899, c. 733, s. 128.

447. Inland and foreign bills of exchange. An inland bill of exchange is a bill which is or on its face purports to be both drawn and payable within this state. Any other bill is a foreign bill.

Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.

C. S., s. 3111; Rev., s. 2279; 1899, c. 733, s. 129.

Sherrill v. American Trust Co., 176 N. C. 591, 97 S. E. 471.

448. When bill may be treated as promissory note. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

C. S., s. 3112; Rev., s. 2280; 1899, c. 733, s. 130.

Sherrill v. American Trust Co., 176 N. C. 591, 97 S. E. 471.

449. Referee in case of need. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need: that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.

C. S., s. 3113; Rev., s. 2281; 1899, c. 733, s. 131.

ART. 11. ACCEPTANCE.

450. Acceptance defined; how made. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

C. S., s. 3114; Rev., s. 2282; 1899, c. 733, s. 132.

Bills and Notes § 85. The authority to draw, accept or indorse bills, notes and checks will not readily be implied as an incident to the express authority of an agent. It must ordinarily be conferred expressly, but it may be implied, if the execution of the paper is a necessary incident to the business, that is, if the purpose of the agency cannot otherwise be accomplished.—*Bank of Morganton v. Hay*, 143 N. C. 326, 55 S. E. 811.

451. Holder entitled to acceptance on face of bill. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored.

C. S., s. 3115; Rev., s. 2283; 1899, c. 733, s. 133.

452. Acceptance by separate instrument. Where an acceptance is written on a paper other than the bill itself it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

C. S., s. 3116; Rev., s. 2284; 1899, c. 733, s. 134.

Bills and Notes § 85. A letter written within a reasonable time before or after the date of a bill of exchange, describing it in terms not to be mistaken, and promising to accept it, is, if shown to the person who afterwards takes the bill on the credit of the letter, a virtual acceptance, binding the person who makes the promise.—*Bank of Morganton v. Hay*, 143 N. C. 326, 55 S. E. 811.

Nimocks v. Woody, 97 N. C. 1.

453. When promise to accept equivalent to acceptance. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

C. S., s. 3117; Rev., s. 2285; 1899, c. 733, s. 135.

Bank of Morganton v. Hay, 143 N. C. 326, 55 S. E. 811; *Nimocks v. Woody*, 97 N. C. 1.

Bills and Notes § 93. The release of the drawer of an order is a sufficient consideration for an acceptance of the order.—*Craig & Wilson v. Stewart & Jones*, 163 N. C. 531, 79 S. E. 1100.

454. Time allowed drawee to accept. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill, but the acceptance, if given, dates as of the day of presentation.

C. S., s. 3118; Rev., s. 2286; 1899, c. 733, s. 136.

455. Liability of drawee retaining or destroying bill. Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

C. S., s. 3119; Rev., s. 2287; 1899, c. 733, s. 137.

456. Acceptance of incomplete bill. A bill may be accepted before it has been signed by the drawer or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

C. S., s. 3120; Rev., s. 2288; 1899, c. 733, s. 138.

457. Kinds of acceptances. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

C. S., s. 3121; Rev., s. 2289; 1899, c. 733, s. 139. Digitized by Google

458. What constitutes a general acceptance. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only, and not elsewhere.

C. S., s. 3122; Rev., s. 2290; 1899, c. 733, s. 140.

459. What constitutes a qualified acceptance. An acceptance is qualified which is (1) conditional; that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated; (2) partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn; (3) local; that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of the drawees, but not of all.

C. S., s. 3123; Rev., s. 2291; 1899, c. 733, s. 141.

Bills and Notes § 83. Where a draft is accepted payable "when I receive funds to the use of" the drawer, the acceptor is liable when the moneys have been placed to his credit, though he has not taken manual possession.—Wallace Bros. v. Douglass, 116 N. C. 659, 21 S. E. 387.

Bills and Notes § 83. Where persons accept an order upon the condition that they will pay on it, if they are indebted to the drawer, the amount of their indebtedness, and it develops that they owed him nothing at the time of the acceptance, they are not liable; but, where it develops that they owed him something, they are liable to the extent of such indebtedness not exceeding the amount of the order and accrued interest.—Craig & Wilson v. Stewart & Jones, 163 N. C. 531, 79 S. E. 1100.

460. Rights of parties as to qualified acceptance. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. When a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance he must, within a reasonable time, express his dissent to the holder or he will be deemed to have assented thereto.

C. S., s. 3124; Rev., s. 2292; 1899, c. 733, s. 142.

ART. 12. PRESENTMENT FOR ACCEPTANCE.

461. When presentment for acceptance must be made. Presentment for acceptance must be made (1) where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or (2) where the bill expressly stipulates that it shall be presented for acceptance; or (3) where the bill is drawn paya-

ble elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

C. S., s. 3125; Rev., s. 2293; 1899, c. 733, s. 143.

Bills and Notes § 388. Where an unaccepted sight draft, indorsed: "Accepted, payable at F. & M. Bank" is sought to be presented two days before maturity, the conclusive presumption is that the presentment was to be for acceptance, and not payment.—*Burruss v. Life Ins. Co.*, 124 N. C. 9, 32 S. E. 323.

462. Failure to present in reasonable time discharges drawer and indorsers. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so the drawer and all indorsers are discharged.

C. S., s. 3126; Rev., s. 2294; 1899, c. 733, s. 144.

463. How presentment made. Presentment for acceptance must be made by or on behalf of the holder, at a reasonable hour on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and (1) where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only; (2) where the drawee is dead, presentment may be made to his personal representative; (3) where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

C. S., s. 3127; Rev., s. 2295; 1899, c. 733, s. 145.

Bills and Notes § 405. A draft payable at no particular place in a city or town, must be presented at the maker's residence or place of business, if he has such, and if he has not, then the presence of the instrument in the place is a sufficient presentation.—*People's Nat. Bank of Fayetteville v. Lutterloh*, 95 N. C. 495.

464. On what days presentment may be made. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of this chapter.

C. S., s. 3128; Rev., s. 2296; 1899, c. 733, s. 146; 1909, c. 800, s. 1.

465. Presentment where time is insufficient. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before present-

ing it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers or indorsers.

C. S., s. 3129; Rev., s. 2297; 1899, c. 733, s. 147.

466. Where presentment is excused. Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases: (1) Where the drawee is dead or has absconded or is a fictitious person or a person not having capacity to contract by bill; (2) where after the exercise of reasonable diligence presentment cannot be made; (3) where, although presentment has been irregular, acceptance has been refused on some ground.

C. S., s. 3130; Rev., s. 2298; 1899, c. 733, s. 148.

467. When dishonored by nonacceptance. A bill is dishonored by nonacceptance (1) when it is duly presented for acceptance and such an acceptance as is prescribed in this chapter is refused or cannot be obtained; or (2) when a presentment for acceptance is executed and the bill is not accepted.

C. S., s. 3131; Rev., s. 2299; 1899, c. 733, s. 149.

468. Duty of holder, where bill not accepted. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

C. S., s. 3132; Rev., s. 2300; 1899, c. 733, s. 150.

469. Rights of holder, where bill not accepted. When a bill is dishonored by nonacceptance an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary.

C. S., s. 3133; Rev., s. 2301; 1899, c. 733, s. 151.

ART. 13. PROTEST.

470. In what cases protest necessary. Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance; and where such a bill which had not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest in case of dishonor is unnecessary.

C. S., s. 3134; Rev., s. 2302; 1899, c. 733, s. 152.

Bills and Notes § 411. Protest is necessary in the case of foreign bills, but protest may be waived, and when this is done it also waives presentment and notice.—*Shaw Bros. v. McNeill*, 95 N. C. 535.

471. How protest made. The protest must be annexed to the bill or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify (1) the time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

C. S., s. 3135; Rev., s. 2303; 1899, c. 733, s. 153.

472. By whom protest made. Protest may be made by (1) a notary public; or (2) by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

C. S., s. 3136; Rev., s. 2304; 1899, c. 733, s. 154.

473. When protest to be made. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted the protest may be subsequently extended as of the date of the noting.

C. S., s. 3137; Rev., s. 2305; 1899, c. 733, s. 155.

474. Where protest made. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary.

C. S., s. 3138; Rev. s. 2306; 1899, c. 733, s. 156.

475. Protest both for nonacceptance and nonpayment. A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

C. S., s. 3139; Rev., s. 2307; 1899, c. 733, s. 157.

476. Protest before maturity, where acceptor insolvent. Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

C. S., s. 3140; Rev., s. 2308; 1899, c. 733, s. 158.

477. When protest dispensed with. Protest is dispensed with by any circumstances which would dispense with notice of dis-

honor. Delay in noting or protesting is excused when delay is caused by circumstances beyond control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

C. S., s. 3141; Rev., s. 2309; 1899, c. 733, s. 159.

478. Protest where bill is lost. Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

C. S., s. 3142; Rev., s. 2310; 1899, c. 733, s. 160.

ART. 14. ACCEPTANCE FOR HONOR.

479. When a bill may be accepted for honor. Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party.

C. S., s. 3143; Rev., s. 2311; 1899, c. 733, s. 161.

480. How acceptance for honor made. An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

C. S., s. 3144; Rev., s. 2312; 1899, c. 733, s. 162.

481. When deemed an acceptance for honor of drawer. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

C. S., s. 3145; Rev., s. 2313; 1899, c. 733, s. 163.

482. Liability of acceptor for honor. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

C. S., s. 3146; Rev., s. 2314; 1899, c. 733, s. 164.

483. Agreement of acceptor for honor. The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall

not have been paid by the drawee; and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

C. S., s. 3147; Rev., s. 2315; 1899, c. 733, s. 165.

484. Maturity of bill payable after sight accepted for honor. Where a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

C. S., s. 3148; Rev., s. 2316; 1899, c. 733, s. 166.

485. Protest of bill accepted for honor. Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

C. S., s. 3149; Rev., s. 2317; 1899, c. 733, s. 167.

486. How presentment for payment to acceptor for honor made. Presentment for payment to the acceptor for honor must be made as follows: (1) If it is to be presented in the place where the protest for nonpayment was made it must be presented not later than the day following its maturity; (2) if it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time in this chapter specified.

C. S., s. 3150; Rev., s. 2318; 1899, c. 733, s. 168.

487. When delay in making presentment excused. The provisions of section 3062 (herein 398) apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

C. S., s. 3151; Rev., s. 2319; 1899, c. 733, s. 169.

488. Dishonor of bill by acceptor for honor. When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

C. S., s. 3152; Rev., s. 2320; 1899, c. 733, s. 170.

ART. 15. PAYMENT FOR HONOR.

489. Who may make payment for honor. Where a bill has been protested for nonpayment any person may intervene and pay it *supra* protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

C. S., s. 3153; Rev., s. 2321; 1899, c. 733, s. 171.

490. How payment for honor must be made. The payment for

honor *supra* protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor, which may be appended to the protest or from an extension to it.

C. S., s. 3154; Rev., s. 2322; 1899, c. 733, s. 172.

491. Declaration before payment for honor. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

C. S., s. 3155; Rev., s. 2323; 1899, c. 733, s. 173.

492. Preference of parties offering to pay for honor. Where two or more persons offer to pay a bill for the honor of different parties the person whose payment will discharge most parties to the bill is to be given the preference.

C. S., s. 3156; Rev., s. 2324; 1899, c. 733, s. 174.

493. Effect on subsequent parties, where bill is paid for honor. Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

C. S., s. 3157; Rev., s. 2325; 1899, c. 733, s. 175.

494. Where holder refuses to receive payment *supra* protest. Where the holder of a bill refuses to receive payment *supra* protest he loses his right of recourse against any party who would have been discharged by such payment.

C. S., s. 3158; Rev., s. 2326; 1899, c. 733, s. 176.

495. Rights of payer for honor. The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor is entitled to receive both the bill itself and the protest.

C. S., s. 3159; Rev., s. 2327; 1899, c. 733, s. 177.

ART. 16. BILLS IN A SET.

496. Bills in a set constitute one bill. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

C. S., s. 3160; Rev., s. 2328; 1899, c. 733, s. 178.

497. Rights of holders, where different parts are negotiated. Where two or more parts of a set are negotiated to different

holders in due course the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

C. S., s. 3161; Rev., s. 2329; 1899, c. 733, s. 179.

498. Liability of holder who indorses two or more parts of a set to different persons. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if such parts were separate bills.

C. S., s. 3162; Rev., s. 2330; 1899, c. 733, s. 180.

499. Acceptance of bills drawn in sets. The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

C. S., s. 3163; Rev., s. 2331; 1899, c. 733, s. 181.

500. Payment by acceptor of bills drawn in sets. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

C. S., s. 3164; Rev., s. 2332; 1899, c. 733, s. 182.

501. Effect of discharging one of a set. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

C. S., s. 3165; Rev., s. 2333; 1899, c. 733, s. 183.

ART. 17. PROMISSORY NOTES AND CHECKS.

502. Negotiable promissory note defined. A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order it is not complete until indorsed by him.

C. S., s. 3166; Rev., s. 2334; 1899, c. 733, s. 184.

503. Check defined. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided

the provisions of this chapter that are applicable to a bill of exchange payable on demand apply to a check.

C. S., s. 3167; Rev., s. 2335; 1899, c. 733, s. 185.

Bills and Notes § 15. A check is a bill of exchange, and may more particularly be defined as a written order on a bank or banker, purporting to be drawn against a deposit of funds, for the payment, at all events, of a sum of money to a certain person therein named, or to him or his order, or to bearer, and payable on demand.—*Standard Trust Co. v. Commercial Nat. Bank*, 166 N. C. 112, 83 S. E. 474.

Bills and Notes § 338. Cashier's checks, whether certified or otherwise, are classed with bills of exchange, payable on demand; and if negotiated by indorsement for value without notice, and within a reasonable time, a holder can maintain the position of a holder in due course.—*Singer Mfg. Co. v. Summers*, 143 N. C. 102, 55 S. E. 522.

Bills and Notes § 108. A stipulation stamped on the face of a check that it will positively not be paid to a certain company or its agents, is a valid restriction and binding on the holder.—*Commercial Nat. Bank of Charlotte v. First Nat. Bank of Gastonia*, 118 N. C. 783, 24 S. E. 524.

504. Within what time a check must be presented. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

C. S., s. 3168; Rev., s. 2336; 1899, c. 733, s. 186.

Bills and Notes § 383. Where a party obtained check from a bank in this state and negotiated the same to a party residing in Virginia in five days thereafter, such negotiation was within a reasonable time.—*Singer Mfg. Co. v. Summers*, 143 N. C. 102, 55 S. E. 522.

Bills and Notes § 383. The holder of a check upon a bank, drawn before, but presented after, the bank's assignment for the benefit of creditors, is not entitled to the amount thereof as against the assignee to the extent of the fund so held.—*Hawes v. Blackwell*, 107 N. C. 196, 12 S. E. 245.

505. Effect of certification of check. Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.

C. S., s. 3169; Rev., s. 2337; 1899, c. 733, s. 187.

506. Effect, where holder of check procures it to be certified. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

C. S., s. 3170; Rev., s. 2338; 1899, c. 733, s. 188.

507. Check not assignment of funds. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

C. S., s. 3171; Rev., s. 2339; 1899, c. 733, s. 189.

Banks and Banking § 98. The reason why the holder of a check is not

permitted to sue the bank has been stated by the authorities to be, that there is no penalty between the holder and the bank until by certification of the check or the acceptance thereof, express or implied, or by any other act or conduct it has made itself directly liable to the holder.—*Standard Trust Co. v. Commercial Nat. Bank*, 166 N. C. 112, 83 S. E. 474.

Banks and Banking § 98. An action cannot be sustained against a bank by the payee of a negotiable check, though the drawer has funds on deposit sufficient for its payment against which the bank has no claim.—*Perry v. Bank of Smithfield*, 131 N. C. 117, 42 S. E. 551.

Banks and Banking § 98. The giving of a check upon a bank is not, unless it is accepted, an assignment of the claim of the depositor, and passes no title, legal or equitable, to his moneys on deposit in such bank.—*Ibid*.

Bills and Notes § 383. The holder of a check upon a bank, drawn before, but presented after, the bank's assignment for the benefit of creditors, is not entitled to the amount thereof as against the assignee to the extent of the fund so held.—*Hawes v. Blackwell*, 107 N. C. 196, 12 S. E. 245.

IMPORTANT DECISIONS RENDERED SINCE THE COMPILATION OF THIS BOOK.

Banks and Banking § 131. Where plaintiff's agent deposited money to her credit, and the pass book was made in her name, he had no authority, without her knowledge or consent, to withdraw such deposit, although the pass book was in the agent's possession, and plaintiff never notified the bank not to pay deposit to him.—*Goodloe v. Fidelity Bank*, 111 S. E. 516.

Bills and Notes § 378. While a bank should use a protectograph when issuing cashier's or certified checks, its failure to use such a device, which resulted in the alteration of the check, is not actionable. —*Broad Street Bank v. First National Bank of Goldsboro*. 112 S. E. 11.

CHAPTER VI.

CO-OPERATIVE ASSOCIATIONS.

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SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS.

ART. 1. ORGANIZATION.

508. Application of term. The term "building and loan association," as used in this subchapter, shall apply to and include all corporations, companies, societies, or associations organized for the purpose of making loans to its members only, and of enabling its members to acquire real estate, make improvements thereon and remove incumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes. It shall be unlawful for any corporation, company, society, or association doing business in this state not so conducted to use in its corporate name the term "building and loan association" or "building association," or in any manner or device to hold themselves out to the public as a building and loan association.

C. S., s. 5169; Rev., s. 3881; 1905, c. 435, s. 16.

509. Method of incorporation; powers. It shall be lawful for any persons in any city, town, or county of this state, under any name by them to be assumed, to associate for the purpose of organizing and establishing a homestead and building and loan association, and, being so associated, they shall, on complying with this subchapter, be a body politic and corporate, and as such be capable in law to hold and dispose of property, both real and personal; may have and use a common seal; may choose a presiding and other officers; may enact by-laws for the regulation of the affairs of such corporation, and compel the due observance of the same by fines and penalties; may sue and be sued, plead and be impleaded, answer and be answered in any court in this state, and do all acts necessary for the well ordering and good government of the affairs of such corporation, and shall exercise all and singular the powers incident to bodies politic and corporate: Provided, that before any such corporation shall be entitled to the privileges of this subchapter it shall file with the clerk of the superior court of the county where such corporation is designed to act a copy of the certificate of incorporation of such corporation, signed by at least seven members, to be recorded in the office of such clerk, and shall pay a tax of twenty-five dollars to the clerk, which tax shall be paid over by the clerk to the treasurer of the county, to the use of the school fund of the

county. The clerk shall certify a copy of the charter to the insurance commissioner.

C. S., s. 5170; Rev., s. 3877; 1905, c. 435, s. 1.

The General Assembly may require a corporation to pay a license tax for the privilege of carrying on its business, and forbid counties or other municipalities to exact any other license tax or fee.—Charlotte Building & Loan Ass'n v. Commissioners, 115 N. C. 410, 20 S. E. 526.

510. Amendments to certificate. Any addition, alteration, or amendment of the certificate of incorporation of any such corporation shall be signed, certified, and recorded as is provided in the preceding section.

C. S., s. 5171; Rev., s. 3878; 1905, c. 435, s. 2.

511. Form of certificate. Substantially the following form shall be used by associations to be formed under this chapter:

CERTIFICATE OF INCORPORATION.

This is to certify that we, the undersigned citizens of the state of North Carolina, hereby associate ourselves into a building and loan association under and by virtue of the provisions of subchapter 1, entitled Building and Loan Associations, of chapter 93 of the Consolidated Statutes of North Carolina, and by this certificate do set forth:

First. The name of said association is to be

Second. The location where its business is to be transacted is in the in the county of and state of North Carolina, and the principal office of said corporation is to be at No., street, in the of aforesaid.

Third. The object for which said association is formed is to enable the subscribers hereto to assist each other, and all who may become associated with them, in making loans to its members only, and to enable them to acquire real estate, making improvement thereon and removing incumbrances therefrom by the payment of periodical installments, and to accumulate a fund, to be paid by its members who do not obtain loans for the purposes aforesaid when the funds of said association shall amount to the sum of dollars per share of the first and subsequent classes or series.

Fourth. The amount fixed as the value of each share, when matured or full paid, is to be dollars. The number of shares to be subscribed before said association shall begin business shall be The maximum number of shares in this association at any one time to be in force shall be The number of shares subscribed for by the incorporators is, and the number of shares subscribed for by each of them is as follows:

Name	Number of Shares
.....
.....
.....
.....
.....

In witness whereof, we have hereto set our hands and seals, the.....
day of, A. D. 19....

..... (Seal.)
..... (Seal.)
..... (Seal.)
..... (Seal.)
..... (Seal.)

Signed, sealed, and delivered in the presence of

C. S., s. 5172; Rev., s. 3879; 1905, c. 435, s. 27.

512. When to begin business. Upon filing the certificate of incorporation with the clerk of the superior court of the county where the principal office of the corporation is located, and with the insurance commissioner, the company shall become a body politic and corporate, and shall be authorized to begin business, when licensed by the insurance commissioner.

C. S., s. 5173; Rev., s. 3880; Code, s. 2297; 1907, c. 959, s. 1.

513. Chapter on corporations applicable. All of the provisions of law relating to private corporations, and particularly those enumerated in the chapter entitled Corporations, not inconsistent with this subchapter, or with the business of building and loan associations, shall be applicable to building and loan associations.

C. S., s. 5174; Rev., s. 3882.

514. Charters validated. The charters of all building and loan associations heretofore organized are hereby in all respects validated and confirmed, and all such associations shall have the powers and privileges of associations formed under this subchapter.

C. S., s. 5175; Rev., s. 3883; 1905, c. 435, s. 27.

ART. 2. SHARES AND SHAREHOLDERS.

515. Number of shares and entrance fee prescribed. Any corporation created under and by virtue of this subchapter shall have the power to declare in its certificate of incorporation the maximum number of shares of which the corporation shall consist to be in force at any time, the par value of the same, to prescribe the entrance fee per share to be paid by each shareholder at the time of subscribing, to regulate the amount of the installments to be paid on each share, and the time at which the same shall be paid and payable.

C. S., s. 5176; Rev., s. 3887; 1905, c. 435, s. 3.

516. Different classes of shares; guaranteed dividends. Every building and loan association doing business in this state shall be authorized to issue as many series or classes and kinds of shares and at such stated periods as may be provided for in its

charter or by-laws: Provided, the guaranteed dividends on paid-up or guaranteed stock shall be less than the association is earning, and may have the right to share in the dividends between the guaranteed and the earned per centum.

C. S., s. 5177; Rev., s. 3889; 1905, c. 435, s. 6; 1907, c. 959, s. 3; 1919, c. 179, s. 3.

517. Certificate issued and payment enforced. Any such corporation shall have power to issue to each member a certificate of the shares held by him, and to enforce the payment of all installments and other dues due to the corporation from the members or shareholders by such fines and forfeitures as the corporation may from time to time provide in the by-laws or its certificate of incorporation.

C. S., s. 5178; Rev., s. 3888; 1905, c. 435, s. 4.

518. New members admitted. Any person applying for membership or shares in any corporation after the end of a month from the date of its incorporation may be required to pay, on subscribing, such sums or assessments as may from time to time be fixed and assessed in the manner provided by the corporation, in order to place such new member or shareholder on like footing with the original members and others holding shares at the time of such application.

C. S., s. 5179; Rev., s. 3886; 1905, c. 435, s. 5.

519. Shareholders equally liable. All shareholders of the serial plan shall occupy the same relative position as to debts, losses, and profits of the association; but this provision shall not prevent any association from receiving dues in advance, allowing such a rate of interest for the anticipated payments of dues as may be agreed on by the directors. No series or class of stock shall be paid off until fully matured.

C. S., s. 5180; Rev., s. 3884; 1905, c. 435, s. 7; 1907, c. 959, s. 2; 1919, c. 179, s. 2.

Building & Loan § 42. In case of insolvency of a building and loan association, borrowing members should be charged with the amount actually received by them, with 6 per cent. interest, and credited with the amount paid by them, whether paid as fines, penalties or weekly dues.—*Strauss v. Carolina Interstate Building & Loan Ass'n*, 117 N. C. 308, 23 S. E. 450.

Building & Loan § 34. A holder of stock in a building and loan association must share in the losses as well as the profits of the concern, and is liable for duly authorized assessments to cover the losses of the corporation.—*New Bern B. & L. Ass'n v. Blalock*, 160 N. C. 490, 76 S. E. 532.

520. Married women and minors as shareholders. Married women and minors of the age of twelve years and upwards are

authorized and empowered to become shareholders in and buy, sell, hold, pay dues on, withdraw, transfer, and otherwise deal in the shares in any such association in the same manner and with the same powers, rights, and liabilities, force and effect as though such minors or femes covert were of full age or unmarried.

C. S., s. 5181; Rev., s. 3885; 1903, c. 728; 1905, c. 435, s. 1.

Husband & Wife § 98. A stockholder in a building association, who owes it for balance of money borrowed, though a married woman must, on the association becoming insolvent, contribute to the losses.—*Meares v. Duncan*, 123 N. C. 203, 31 S. E. 476.

ART. 3. LOANS.

521. Manner of making loans; security required. At such times as the by-laws shall designate, not less frequently than once a month, the board of directors shall hold meetings at which the funds in the treasury applicable for loans may be loaned. No loans shall be made by such association to any one not a shareholder thereof, nor to any shareholder for an amount greater than the par value of the shares held by such shareholder. Borrowers shall be required to give real estate security, either by way of mortgage or deed in trust unincumbered, except by the prior liens held by such association, accompanied by a transfer and pledge to the association of the shares by reason of which he became entitled to obtain such loan, as collateral security for the repayment of the loan: Provided, that the shares of any such association may be received as security for a loan on such shares of an amount not to exceed ninety per centum of the amount paid in as dues on such shares: Provided further, that liberty loan bonds issued by the United States government may be received as security to an amount not exceeding ninety per cent of the face value of such bonds, and not exceeding the par value of the shares of stock held by the borrower; and any loans heretofore made by any such association upon the security of such liberty loan bonds, within said limits, are in all respects validated.

C. S., s. 5182; Rev., s. 3890; 1905, c. 435, s. 8; 1907, c. 959, s. 4; 1919, c. 249.

522. Repayment at any time. Any member of such association who shall borrow from it shall have the right at any time prior to the maturing of the shares pledged as collateral for such loan to pay off and discharge his loan by paying the amount received by him, including the cost and expenses of making the loan, if the same has been deducted therefrom, with interest at the rate of six per cent per annum on the whole sum received by him to the date of settlement and all fines and dues then remaining

unpaid. Upon such settlement he shall be credited with only the withdrawal value of his shares as fixed by the charter or by-laws, or by the directors of such association. In case of default by a shareholder who has borrowed from the association and a foreclosure of his mortgage or deed of trust, the amount of this indebtedness to such association shall be ascertained in the manner provided by this subchapter.

C. S., s. 5183; *Strauss v. Loan Assn.*, 117-308, 118-556; *B. and L. A. v. Blalock*, 160-490.

Building & Loan § 34. A stockholder of a building and loan association, who is also a borrower from it on the security of his stock and a deed of trust binding realty for payment of principal, interest, and assessments, is not entitled to have the deed of trust cancelled until he has paid his pro rata part of the losses of the association.—*New Bern B. & L. Ass'n v. Blalock*, 160 N. C. 490, 76 S. E. 532.

Building & Loan § 33. Building and loan associations are governed by the usury law.—*Ibid.*

Building & Loan § 33. A fine for nonpayment of money is interest; and, where a building and loan association, by means of fines, exacts more than the legal rate, the fines are usurious interest.—*Smith v. Old Dominion Building & Loan Ass'n*, 119 N. C. 257, 26 S. E. 40.

Building & Loan § 33. Where a member of a building association borrows from it, any charges made against him in excess of the lawful rate of interest, whether called "fines," "charges," "dues," or "interest," are usurious.—*Hollowell v. Southern Building & Loan Ass'n*, 120 N. C. 286, 26 S. E. 781.

Building & Loan § 42. In case of insolvency of a building and loan association, borrowing members should be charged with the amount actually received by them, with 6 per cent. interest, and credited with the amount paid by them, whether paid as fines, penalties, or weekly dues.—*Strauss v. Carolina Interstate Building & Loan Ass'n*, 117 N. C. 308, 23 S. E. 450.

523. Power to borrow money. Any such association may in its constitution authorize the board of directors from time to time to borrow money on the note of the association. The board of directors may, from time to time, by resolution adopted by a vote of at least two-thirds of all the members of the board and duly recorded on the minutes, borrow money for the association on such terms and conditions as they may deem proper; but the total amount of money so borrowed shall at no time exceed thirty per centum of the amount then actually paid into the association as subscription or dues on installment shares, and the same shall be used for no other purpose than to make loans to members in regular course of business or to pay maturing series of stock.

C. S., s. 5184; Rev., s. 3892; 1905, c. 435, s. 10; 1909, c. 898; 1911, c. 61; 1913, c. 21.

**ART. 4. UNDER CONTROL OF INSURANCE
COMMISSIONER.**

524. Power of insurance commissioner. The insurance commissioner of the state is hereby empowered and directed to perform all the duties and exercise all the powers as to building and loan associations now imposed or conferred upon any other officer of the state by the laws thereof, unless herein otherwise provided.

C. S., s. 5185; Rev., s. 3893; 1905, c. 435, s. 24.

525. Annual license fees. All domestic building and Loan associations shall pay an annual license fee of twenty-five dollars and may be licensed upon filing with the insurance commissioner an application in such form as he may prescribe. Such license fee shall be used to defray the expenses incurred by the insurance commissioner in supervising building and loan associations.

C. S., s. 5186; 1919, c. 179, s. 1.

526. Statement filed by association. Every association doing business under this subchapter shall file in the office of the insurance commissioner, on or before the first day of February in each year, in such form as he shall prescribe, a statement of the business standing and financial condition of the applicant on the preceding thirty-first day of December, signed and sworn to by the principal, or chief managing agent, attorney, or officer thereof, before the insurance commissioner, or before a commissioner of affidavits for North Carolina, or before some notary public.

C. S., s. 5187; Rev., s. 3894; 1905, c. 435, s. 11; 1907, c. 959, s. 5.

527. Statement examined, approved, and published; fees. It shall be the duty of the insurance commissioner to receive and thoroughly examine each annual statement required by this subchapter, and if made in compliance with the requirements thereof, to publish an abstract of the same in one of the newspapers of the state, to be selected by the general agent or attorney making such statement, and at the expense of his principal. The insurance commissioner shall be entitled to a fee of five dollars, to be paid by the association filing such statement.

C. S., s. 5188; Rev., s. 3895; 1905, c. 435, s. 12.

528. License revoked. If the insurance commissioner shall become satisfied at any time that any statements made by any association licensed under this subchapter are untrue, or in case a general agent shall fail or refuse to obey the provisions of this subchapter, or if upon examination the insurance commissioner is of opinion that such association or company is insolvent, or

has exceeded its powers, or has failed to comply with any provisions of law, or its mode of business is not feasible for the purposes of carrying out successfully its plan, or that its condition is such as to render its further proceedings hazardous to the stockholders, he shall thereupon have power to revoke and cancel such license.

C. S., s. 5189; Rev., s. 3896; 1905, c. 435, s. 13; 1907, c. 959, s. 6.

529. Examinations made; expense paid. If at any time the insurance commissioner has good reason to think that the standing and responsibility of any building and loan association or company doing business in this state, or its mode of business, is of a doubtful character, or in his discretion whenever he deems it prudent to do so, it shall be his duty to examine and investigate everything relating to the business of such company, and to that end he is hereby authorized, if he deem it advisable, to appoint a suitable and competent person to make such investigation, who shall file with the insurance commissioner a full report of his finding in such case. The expenses and cost of such examination shall be defrayed by the company or association subjected to investigation, and each company or association doing business in this state shall stipulate in writing, to be filed with the insurance commissioner, that it will pay all reasonable cost and expenses of such examination when it shall become necessary.

C. S., s. 5190; Rev., s. 3897; 1905, c. 435, ss. 14, 15; 1919, c. 179, s. 4.

530. Failing to exhibit books or making false statement a misdemeanor. If any person having in his possession or control any books, accounts, or papers of any building and loan association licensed by law, shall refuse to exhibit the same to the insurance commissioner, or his agents on demand, or shall knowingly or wilfully make any false statement in regard to the same, he shall be guilty of a misdemeanor, and fined and imprisoned, at the discretion of the court.

C. S., s. 5191; Rev., s. 3329; 1893, c. 434; 1899, c. 164.

531. Agent must obtain certificate. It shall be unlawful for any person to solicit business or act as agent for any building and loan association or company without having procured from the insurance commissioner a certificate that such association or company for which he offers to act is duly licensed by the state to do business for the current year in which such person solicits business or offers to act as agent.

C. S., s. 5192; Rev., s. 3898; 1895, c. 444, s. 3; 1899, c. 154, s. 2, subsec. 20; 1907, c. 959, s. 7.

532. Penalties imposed and recovered. Every general agent or attorney of any building and loan company or association who shall fail or refuse to perform any duty required of him by this subchapter shall forfeit and pay to the insurance commissioner fifty dollars for the state for every such refusal, to be recovered before any justice of the peace at the suit of the insurance commissioner.

C. S., s. 5193; Rev., s. 3899; 1893, c. 434, s. 2300g; 1899, c. 154, s. 2, subsec. 20.

ART. 5. FOREIGN ASSOCIATIONS

533. Allowed to do business. A building and loan association of another state may be admitted to transact business in this state in the manner hereinafter provided, and no association not so admitted shall transact business in this state.

C. S., s. 5194; Rev., s. 3900; 1905, c. 435, s. 17.

534. Copy of charter and list of officers filed. Application for authority to transact business in this state shall be made to the insurance commissioner, and on making such application every such association shall file with the insurance commissioner a duly authenticated copy of its charter or certificate of incorporation, its constitution and by-laws, and thereafter certified copies of all amendments thereto, the names and addresses of its officers and directors, the compensation paid each officer, and a report of its condition, in such form as may be prescribed by the insurance commissioner, which shall be verified by oath of such officers and other persons as the commissioner shall designate, and the commissioner shall furnish blank forms for the report required, and may call for additional reports at such other times as may seem to him expedient.

C. S., s. 5195; Rev., s. 3902; 1905, c. 435, s. 19.

535. License granted. If it shall appear to the insurance commissioner by the report aforesaid and by an examination of the affairs of such association that it has good assets of sufficient value to cover all liabilities, and that its methods of doing business are safe and not contrary to the laws governing building and loan associations of this state, it may be admitted to transact business in this state upon a certificate of authority to be issued by the insurance commissioner, which shall only be issued when such association shall have complied with the further requirements of this article.

C. S., s. 5196; Rev., s. 3903; 1905, c. 435, s. 20.

536. Securities deposited. The insurance commissioner before issuing the certificate of authority aforesaid shall require every such association to deposit with the commissioner such securities as he may approve, amounting to at least thirty thousand dollars, which securities shall be held by him in trust for the exclusive benefit and security of the creditors and shareholders of such association resident in this state, and he shall have authority to require it to deposit additional securities and to order a change in any of the securities so deposited at any time, and no change or transfer of the same shall be made or be effectual without his consent. Such deposit shall be maintained intact in the full sum required at all times, but the association making such deposit, so long as it shall continue solvent and comply with all the provisions of this subchapter applicable to it, may receive the dividends or interest on the securities deposited, and may from time to time, with the assent of the commissioner, withdraw any of such securities on depositing with the commissioner other like securities the par value of which shall be equal to such as may be withdrawn.

C. S., s. 5197; Rev., s. 3904; 1905, c. 435, s. 21.

537. Annual certificate; service of process. Such certificate of authority shall be for the current year only, and shall not be issued until such association shall, by a duly executed instrument filed with the insurance commissioner of the state, constitute the insurance commissioner and his successors in office its true and lawful attorney, upon whom all original process in any action or legal proceedings against it may be served, and therein shall agree that any original process against it which may be served upon the commissioner shall be of the same force and validity as if served on the association, and that the authority thereof shall continue in force irrevocable so long as any liability of the association remains outstanding in this state. The service of such process shall be made by leaving a copy of the same in the office of the insurance commissioner, with a fee of two dollars, to be taxed in the plaintiff's costs. When any original process is thus served, the commissioner, by letter directed to the secretary, shall within two days after such service forward to the secretary a copy of the process served upon him, and such service shall be deemed sufficient service upon the association. The commissioner shall keep a record of all such process, showing the day and hour of service.

C. S., s. 5198; Rev., s. 3906; 1905, c. 435, s. 23.

538. Agent must have certificate of license; fees. It shall be unlawful for any person to solicit business or act as agent for any foreign building and loan association or company doing business in this state without having first procured from the insurance commissioner a certificate that such association or company for which he offers to act is duly licensed by the state to do business for the current year in which such person solicits business or offers to act as agent. The insurance commissioner shall be entitled to a fee of one dollar for issuing each such certificate, to be paid by the company for which the same is issued. Any person violating the provisions of this section shall be guilty of a misdemeanor.

C. S., s. 5199; Rev., ss. 3327, 3901; 1895, c. 444, s. 3; 1905, c. 435, s. 18.

539. Fees and expenses. Every such association shall pay for filing a certified copy of its charter or certificate of incorporation twenty dollars; for filing original annual reports, twenty dollars; for certificate of authority, annually, two hundred and fifty dollars; for certificate for each agency, five dollars; and shall defray all expenses incurred in making any examination of its affairs as herein provided for; and the insurance commissioner may maintain an action in the name of the state against such association for the recovery of such expenses in any court of competent jurisdiction.

C. S., s. 5200; Rev., s. 3905; 1905, c. 435, s. 22.

540. Stock listed for taxation. All foreign building and loan associations doing business in this state shall list for taxation with the state auditor, through its agent, its stock held by citizens of this state in the county, city, or town where the owners of such stock reside. In listing such stock for taxation the withdrawal value as fixed by the by-laws of each company shall be furnished the list taker, and the stock shall be valued for taxation as other money investments of citizens of this state. All such taxes shall be paid by the association listing the stock.

C. S., s. 5201; Rev., s. 3907; 1905, c. 435, s. 25.

541. Failure to list stock for taxation a misdemeanor. If any foreign building and loan association or officer of such association doing business in this state, or any local officer or person shall collect dues, assessments, premiums, fines, or interest from any citizen of this state for any such association which has failed or refused to list for taxation the stock held by citizens of this

state, he shall be guilty of a misdemeanor and subject to fine or imprisonment, or both, in the discretion of the court.

C. S., s. 5202; Rev., s. 3328; 1905, c. 435, s. 25.

542. All contracts deemed made in this state. Any contract made by any foreign association with any citizen of this state shall be deemed and considered a North Carolina contract, and shall be so construed by all the courts of this state according to the laws thereof.

C. S., s. 5203; 1905, c. 435, s. 26.

Building & Loan § 27. Where a loan is made through a local branch of a building and loan association of another state, the by-laws of which provide that the treasurer of the branch shall receive 2 per cent. on collections, and that he shall give bond for prompt remittance of collections to the parent office, the contract, though reciting that it is solvable in the other state, will be held to have been intended to be solved by payment to the local treasurer, and therefore governed by the laws of the state of such branch.—*Meroney v. Atlanta National Building & Loan Ass'n*, 116 N. C. 882, 21 S. E. 924.

Building & Loan § 36. A contract by which the stock taken out by a borrower, and assigned to the association, when the mortgage is executed, is forfeited to the association on default, without allowance of credit on the mortgage for the payments made on the stock, is unconscionable, and, though upheld by the laws of the association's own state, would not be enforceable in North Carolina.—*Rowland v. Old Dominion Building & Loan Ass'n*, 116 N. C. 877, 22 S. E. 8.

SUBCHAPTER II. LAND AND LOAN ASSOCIATIONS.

ART. 6. ORGANIZATION AND POWERS.

543. Application of term. The term "land and loan associations" shall apply to and include all corporations, companies, societies or associations organized for the purpose of making loans to its members only, and of enabling its members to acquire real estate, make improvements thereon, and remove incumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes, where the principles of building and loan associations and their work are adapted to the use of the farmers and the rural population.

It shall be unlawful for any corporation, company, society, or association doing business in this state not so conducted to use in its corporate name the term "land and loan association," or in any manner or device to hold themselves out to the public as a land and loan association.

C. S., s. 5204; 1915, c. 172, s. 1.

544. Incorporation and powers. Land and loan associations shall be incorporated, supervised, and be subject to such regulations and have such privileges as are prescribed for building and loan associations under the laws of this state as they now are or may be hereafter enacted, except as prescribed in this article.

C. S., s. 5205; 1915, c. 172, s. 2.

545. Loans. The boards of directors of land and loan associations may contract for loans to the amount of seventy-five per cent of the securities used by them as collateral, where the loans are on long time (three or more years), and for at least one per cent less than is charged by such associations on their loans to shareholders; and they may make short loans to their shareholders on their shares and personal indorsement or personal property.

C. S., s. 5206; 1915, c. 172, s. 3.

546. Reserve associations. Associations to be known as "reserve land and loan associations" may be chartered and licensed as provided in this article, when organized and the stock therein held by local land and loan associations, and shall have such powers, rights, and privileges as are accorded to other domestic associations, and may conform to such laws, rules, and regulations as may be prescribed by the laws of the United States, or of this state, to enable them to receive moneys, bonds, or securities to be used in loans and to secure the same. Such reserve associations shall be under the supervision of the insurance commissioner as are building and loan associations.

C. S., s. 5207; 1915, c. 172, s. 4.

SUBCHAPTER III. CREDIT UNIONS.

ART. 7. SUPERINTENDENT OF CO-OPERATIVE ASSOCIATIONS AND CREDIT UNIONS.

547. Office created. There shall be established as a part of the division of markets and rural co-operation, established under the "joint committee for agricultural work," provided for in the chapter on Agriculture, article 1, part 3, a superintendent of co-operative associations and credit unions, and such assistants as may be necessary, at salaries to be fixed by the "Joint Committee for Agricultural Work" of the state board of agriculture and the North Carolina State College of Agriculture and Engineering.

C. S., s. 5208; 1915, c. 115, s. 1.

548. Duties of the officer. The duties of the superintendent of co-operative associations and credit unions shall be as follows:

1. To organize and conduct, in the division of markets and rural co-operation, a bureau of information in regard to co-operative associations and rural credits.

2. Upon the application of three persons residing in the state of North Carolina, to furnish, without cost, such printed information and blank forms as, in his discretion, may be necessary for the formation and establishment of any co-operative association or any local credit union in the state.

3. To maintain an educational campaign in the state looking to the promotion and organization of co-operative associations and credit unions; and upon the written request of twelve bona fide residents of any particular locality in this state expressing a desire to form a co-operative association or local credit union at such locality, the superintendent or one of his assistants shall proceed as promptly as convenient to such locality and advise and assist such organizers to establish the institution in question.

4. To examine at least once a year, and oftener if such examination be deemed necessary by the superintendent or his assistant, the credit unions and co-operative associations formed under this subchapter. A report of such examination shall be filed with the division of markets and rural co-operation, a copy mailed to the credit union or co-operative association at its proper address, and a copy sent to the clerk of the superior court of the county in which the principal office of the credit union or co-operative association is located, and such report shall be kept on file, by the clerk of the superior court for public inspection.

C. S., s. 5209; 1915, c. 115, s. 1.

ART. 8. INCORPORATION OF CREDIT UNIONS.

549. Application filed. Seven or more persons employed or residing in the state may become a credit union by making, signing, and acknowledging a certificate which shall contain:

1. The name of the proposed credit union, which shall include the words "credit union."

2. A statement that incorporation is desired under this article.

3. The conditions, whether of residence, of occupation, or otherwise, which shall qualify persons for membership.

4. The par value of the shares, which shall not exceed twenty-five dollars.

5. The city, village, or town in which its principal business

office is to be located. If it is to be located in an incorporated city, the street address of the city shall be given. If the condition of its membership is employment by a certain individual, copartnership, or corporation, a statement that its office shall be with such individual, copartnership, or corporation may be substituted for the street address.

6. The number of its directors, not less than five, all of whom must be members of and shareholders in the corporation.

7. The names and postoffice addresses of directors for the first year.

8. The names and postoffice addresses of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation.

C. S., s. 5210; 1915, c. 115, s. 2.

550. By-laws adopted. At the time of filing the certificate the incorporators shall adopt by-laws which shall provide:

1. The name of corporation.

2. The purposes for which it is formed.

3. Qualifications for membership.

4. The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting the meetings; the number of members which constitute a quorum at the meetings, and the regulations as to voting.

5. The number of members of the board of directors, their powers and duties, and the compensation and duties of officers elected by the board of directors.

6. The number of members of the credit committee, their powers and duties.

7. The number of members of the supervisory committee, their powers and duties.

8. The par value of shares of capital stock.

9. The conditions upon which shares may be issued, paid in, transferred, and withdrawn.

10. The fines, if any, which shall be charged for failure to meet obligations to the corporation punctually.

11. The conditions upon which deposits may be received and withdrawn. Whether the proposed corporation shall, in addition, have the power to borrow funds.

12. The manner in which the funds of the corporation shall be invested.

13. The conditions upon which loans may be made and repaid.

14. The maximum rate of interest that may be charged upon loans, not to exceed, however, the legal rate.

15. The method of receipting for money paid on account of shares, deposits, or loans.

16. The manner in which the reserve fund shall be accumulated.

17. The manner in which dividends shall be determined and paid to members.

18. The manner in which a voluntary dissolution of the corporation shall be effected.

C. S., s. 5211; 1915, c. 115, s. 2.

551. Certificate of incorporation. The by-laws acknowledged to have been adopted by all the incorporators, together with the certificate of incorporation, shall be filed in the office of the superintendent of co-operative associations and credit unions, who shall approve the certificate of incorporation if he is satisfied that it is in conformity with this subchapter, and shall approve the by-laws if he is satisfied as to the character of the incorporators and that the by-laws are reasonable and will tend to give assurance that the affairs of the prospective credit union will be administered in accordance with this subchapter. Thereupon, the superintendent of co-operative associations and credit unions shall issue to the corporation a certificate of approval, annexed to a duplicate of the certificate of incorporation and of the by-laws, which certificate of approval, together with the attached duplicate certificate of incorporation and duplicate by-laws, shall be filed in the office of the clerk of the superior court of the county in which the office of such credit union is situated, and upon such filing the incorporators shall become and be a corporation. The county clerk shall charge the same filing fee for filing the certificate of approval, certificate of incorporation and by-laws as he is now allowed to charge for filing a certificate of incorporation of a corporation organized under the business corporations law of the state.

C. S., s. 5212; 1915, c. 115, s. 2.

552. Amendment of by-laws. The by-laws adopted by the incorporators and approved by the superintendent of co-operative associations and credit unions shall be the by-laws of the corporation, and no amendment to the by-laws shall become operative until such amendment shall have been approved by the superintendent of co-operative associations and credit unions, and a copy thereof certified by him, with a certificate of his approval, shall be filed in the office of the clerk of the superior court of the county where the office of the credit union is located. Such approval may

be given or withheld by the superintendent of co-operative associations and credit unions at his discretion. The county clerk shall receive the same fee for filing as provided in the preceding section.

C. S., s. 5213; 1915, c. 115, s. 3.

496. Bills in a set constitute one bill. Where a bill is drawn in partnership, association, or corporation except corporations formed under the provisions of this subchapter, of any name or title which contains the two words "credit" and "union," shall be a misdemeanor.

C. S., s. 5214; 1915, c. 115, s. 4.

554. Change of place of business. A credit union may change its place of business on the written approval of the superintendent of co-operative associations and credit unions, which written approval shall be filed in the office of the superintendent of co-operative associations and credit unions and a duplicate of the approval in the office of the clerk of the superior court of the county where its office was located, and a second duplicate in the office of the clerk of the superior court of the county in which the new office is to be located. Such approval of the superintendent may be given or withheld at his discretion.

C. S., s. 5215; 1915, c. 115, s. 25.

ART. 9. POWERS OF CREDIT UNIONS.

555. General nature of business. A credit union may receive the savings of its members in payment for shares or on deposit; may loan to its members at reasonable rates of interest not exceeding the legal rate, or may invest as hereinafter provided the funds so accumulated, and may undertake such other activities relating to the purpose of the corporation as its by-laws may authorize.

C. S., s. 5216; 1915, c. 115, s. 5.

556. Receive deposits. A credit union may receive on deposit the savings of its members and also nonmembers in such amounts and upon such terms as the board of directors may determine and the by-laws shall provide.

C. S., s. 5217; 1915, c. 115, s. 16.

557. Borrowing money. If the by-laws so provide, a credit union shall have power to borrow money from any source in addition to receiving deposits from its own members, but the aggre-

gate amount of such indebtedness in the case of credit unions which have over five thousand dollars in capital, surplus, and reserve funds shall not at any one time exceed more than the sum of such funds.

C. S., s. 5218; 1915, c. 115, s. 17; 1917, c. 232, s. 1.

558. Investment of funds. The capital, deposits, undivided profits and reserve fund of the corporation may be invested in one of the following ways, and in such way only:

1. They may be lent to the members of the corporation in accordance with the provisions of this subchapter.

2. They may be deposited to the credit of the corporation in savings banks, credit unions, state banks or trust companies, incorporated under the laws of the state, or in national banks located therein. Funds of credit unions deposited in a savings bank, state bank, or trust company which may become insolvent, shall be preferred in the same way that funds of a "savings and loan association" so deposited are preferred under the banking law of the state.

3. After a credit union shall have been in existence for three fiscal years so much of the reserve fund hereof as shall equal twenty per centum of the total liabilities of the credit union shall be deposited on interest in banks incorporated under the laws of the state, and in the national banks therein.

4. Not more than ten per cent of the capital stock and reserve fund of a credit union may be invested in the stock of another credit union.

C. S., s. 5219; 1915, c. 115, s. 18; 1917, c. 232, ss. 2, 3.

559. Loans. 1. *To Members.* A credit union may lend to its members for such purposes and upon such security and terms as the by-laws shall provide and the credit committee shall approve; but security must be taken for any loan in excess of fifty dollars. An indorsed note shall be deemed to be security within the meaning of this section.

2. *Installment loans.* A member who needs funds with which to purchase necessary supplies for growing crops may receive a loan in fixed monthly installments instead of in one sum.

3. *Loans to members of committee.* The supervisory committee shall appoint a substitute to act on the credit committee in the place of any member in case such member makes application to borrow money from the credit union or becomes surety for any other member whose application for a loan is under consideration.

4. *Loans to persons not members forbidden.* All officers and members of any committees in any way knowingly permitting or participating in making a loan of funds of a credit union to one not a member thereof shall be guilty of a misdemeanor. The credit union shall have the right to recover the amount of such illegal loans from the borrower or from any officers or members of committees who knowingly permitted or participated in the making thereof, or from all of them jointly.

5. *Repayment of loans.* A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business.

C. S., s. 5220; 1915, c. 115, s. 19; 1917, c. 232, s. 4.

560. Rate of interest; penalty. No corporation organized pursuant to this subchapter shall directly or indirectly charge or receive any interest, discount, or consideration, other than the entrance fee, greater than the legal rate.

Any corporation, any person, the several officers of any corporation, and the members of committees who shall violate the foregoing prohibition shall be guilty of a misdemeanor. The corporation shall also be subject to procedure by the superintendent of co-operative associations and credit unions as prescribed herein in article twelve.

C. S., s. 5221; 1915, c. 115, s. 20.

561. Reserve fund. All entrance fees, transfer fees, and fines, shall after the payment of organization expenses, be known as reserve income, and shall be added to the reserve fund of the corporation.

At the close of each fiscal year there shall be set apart to the reserve fund twenty-five per centum of the net income of the corporation which has accumulated during the year. But upon the recommendation of the board of directors the members at an annual meeting may increase, and whenever such funds equal the amount of the capital may decrease, the proportion of profits which is required by this section to be set apart to the reserve fund. Nor shall the reserve fund in any case exceed the capital of the corporation plus fifty per centum of its other liabilities.

The reserve fund shall belong to the corporation and shall be held to meet contingencies, and shall not be distributed to the members except upon the dissolution of the corporation.

C. S., s. 5222; 1915, c. 115, s. 21.

562. Dividends. At the close of the fiscal year a credit union

may declare a dividend not to exceed six per cent per annum from the income during the year and which remains after the deduction of expenses, losses, interest on deposits, and the amount required to be set apart to the reserve fund. Dividends shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled to a proportional part of such dividend calculated from the first day of the month following such payment in full.

C. S., s. 5223; 1915, c. 115, s. 22.

563. Voluntary dissolution. At any meeting specially called to consider the subject, four-fifths of the entire membership of the corporation may vote to dissolve the corporation and upon such vote shall signify their consent to such dissolution in writing. Such corporation shall then file in the office of the superintendent of co-operative associations and credit unions such consent, attested by its secretary or treasurer and its president or vice-president, with a statement of the names and residences of the existing board of directors of the corporation and the names and residences of its officers duly verified. The superintendent of co-operative associations and credit unions, upon receipt of satisfactory proof of the solvency of the corporation, shall issue to such corporation, in duplicate, a certificate to the effect that such consent and statement have been filed and that it appears therefrom that such corporation has complied with this section. Such duplicate certificate shall be filed by the corporation in the office of the clerk of the superior court of the county in which the corporation has its place of business, and thereupon such corporation shall be dissolved and shall cease to carry on business except for the purpose of adjusting and winding up its affairs. The corporation, by its board of directors, shall then proceed to adjust and wind up its business and affairs, with power to carry out its contracts, collect its accounts receivable, and to liquidate its assets and apply the same in discharge of debts and obligations of such corporation, and after paying and adequately providing for the payment of such debts and obligations each share, according to the amount paid thereon, shall be entitled to its proportion of the balance of the assets. The corporation shall continue in existence for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing its assets, and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose

of enforcing such debts and obligations until its business and affairs are fully adjusted and wound up.

C. S., s. 5224; 1915, c. 115, s. 24.

564. Savings institution; restriction of taxation. The corporation shall be deemed an institution for savings, and together with all accumulations therein shall not be taxable under any law which shall exempt savings banks or institutions for savings from taxation; nor shall any law passed taxing corporations in any form, or the shares thereof, or the accumulations therein, be deemed to include corporations doing business in pursuance of the provisions of this subchapter, unless they are specifically named in such law. The shares of credit unions, being hereby regarded as a system for saving, shall not be subject to any stock-transfer tax either when issued by the corporation or transferred from one member to another.

C. S., s. 5225; 1915, c. 115, s. 26.

ART. 10. SHARES IN THE CORPORATION.

565. Ownership and transfer of shares. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on the shares. Shares may be subscribed for and paid in such manner as the by-laws shall prescribe. The credit union shall have a lien on the shares of any member and upon any dividends payable thereon for and to the extent of any loan made to him and of any dues or fines payable by him. The credit union may, upon the resignation or expulsion of a member, cancel the shares of such member and apply the withdrawal value of such shares towards the liquidation of the member's indebtedness.

A credit union may, if the by-laws so provide, charge an entrance fee for each share subscribed, to be paid by the shareholder upon his election to membership.

Fully paid shares of a credit union may be transferred to any person eligible for membership, upon such terms as the by-laws may provide, and the payment of a transfer fee shall not exceed twenty-five cents per share.

C. S., s. 5226; 1915, c. 115, s. 13.

566. Shares and deposits for minors and in trust. Shares may be issued and deposits received in the name of a minor, and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor or his parent or guardian, and in either case payments made on such withdrawals shall be valid. If

shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. Such shares or deposits may, upon the death of the trustee, be withdrawn by the person for whom the shares were held or for whom such deposits were made, or by his legal representatives.

C. S., s. 5227; 1915, c. 115, s. 14.

567. Fines and penalties. For failure by any member of a credit union to meet his payments on shares when due, such fines and other penalties may be imposed upon the delinquent member as the by-laws provide. Such fines shall not exceed two per centum per month or a fraction thereof on amounts due, except that a minimum fine of five cents may be imposed.

C. S., s. 5228; 1915, c. 115, s. 15.

568. Liability of shareholders. A shareholder of any such corporation, unless the by-laws so provide, shall not be individually liable for the payment of its debts for an amount in excess of the par value of the shares which he owns or for which he has subscribed.

C. S., s. 5229; 1915, c. 115, s. 26.

ART. 11. MEMBERS AND OFFICERS.

569. Who may become members. The membership of the corporation shall consist of those persons who have been duly elected to membership and who have subscribed for one or more shares and have paid for the same in whole or in part, together with the entrance fee as provided in the by-laws, and have complied with such other requirements as the by-laws may contain. No credit union shall ever pay any commission or offer compensation for the securing of members or on the sale of shares.

C. S., s. 5230; 1915, c. 115, s. 6.

570. Expulsion and withdrawal of members. The board of directors may expel from the corporation any member who has not carried out his engagement with the corporation, or has been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this subchapter or of the by-laws, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt. The members at a regularly called meeting may expel from the corporation any member who has become intemperate or in any way financially irresponsible; no member shall be expelled until he has been informed in writing of the charges against

him and an opportunity has been given him; after reasonable notice, to be heard thereon.

A member may withdraw from a credit union by filing a written notice of his intention to withdraw.

The amounts paid in on shares or deposits by an expelled or withdrawing member, with any dividends credited to his shares and any interest accrued on his deposits to the date of expulsion or withdrawal, shall be paid to such member, but in the order of expulsion or withdrawal and only as funds therefor become available, after deducting any amounts due to the corporation by such member. The member shall have no other or further right in the credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve the member from any remaining liability to the corporation.

C. S., s. 5231; 1915, c. 115, s. 23.

571. Meetings; right of voting. The fiscal year of every such corporation shall end at the close of business on the thirty-first day of December. The annual meeting of the corporation shall be held at such time and place as the by-laws prescribe. Special meetings may be held by order of the directors or of the supervisory committee, and shall be held upon request in writing of ten per cent of the members. Notice of all meetings of the corporation shall be given in the manner prescribed in the by-laws. At all meetings of members or shareholders a member shall have one vote and but one vote, irrespective of the number of shares that may be held by him, and in case of sickness or other unavoidable absence of a member he shall be allowed to vote by proxy in writing, but no member present shall vote more than one such proxy. At any meeting the members may decide upon any question of interest to the corporation, and overrule the board of directors, and by a three-fourths vote of those present and represented, provided the notice of the meeting shall have specified the question to be considered, may vote to amend the by-laws.

C. S., s. 5232; 1915, c. 115, s. 8.

572. Election of directors and committees 1. *Number elected.* At the annual meeting the members shall elect a board of directors of not less than five members, a credit committee and a supervisory committee of not less than three members each. However, in credit unions whose business office is located in places other than incorporated cities, the board of directors as such may also be the credit committee. Except as hereinafter specified, no member of the board shall be a member of either of such com-

mittees, nor shall one person be a member of more than one of such committees. All members of committees and all directors, as well as all officers whom they may elect, shall be sworn, and shall hold their several offices for such term as may be determined by the by-laws.

2. *Oath of office.* The oath required of each director, officer, and member of committee shall be the oath of the individual taking the same that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such corporation, and will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right on the books of the corporation of at least one share therein. Such oath shall be subscribed by the individual making it and certified by the officer before whom it is taken, and shall immediately be transmitted to the superintendent of co-operative associations and credit unions and filed and preserved in his office.

C. S., s. 5233; 1915, c. 115, s. 9.

573. Duties of board of directors. 1. *Elect executive officers.* At their first meeting and at each first meeting in the fiscal year, the board of directors shall elect from their number a president, vice-president, a secretary, and a treasurer, who shall be the executive officers of the corporation. The offices of secretary and treasurer may, if the by-laws so provide, be held by one person.

2. *General management.* The board of directors shall have the general management of the affairs, funds, and records of the corporation, shall meet as often as may be necessary, and, unless the by-laws shall specifically reserve all or any of these duties to the members, it shall be the special duty of the directors:

1. To act upon all applications for membership and the expulsion of members.

2. To fix the amount of the surety bond which shall be required of each officer having the custody of funds.

3. To determine from time to time the rate of interest which shall be allowed on deposits and charged on loans.

4. To fix the maximum number of shares which may be held by and the maximum amount which may be lent to any one member; to declare dividends; and to recommend amendments to the by-laws.

5. To fill vacancies in the board of directors or in the credit committees until the election and qualification of successors.

6. To have charge of the investment of funds of the corpora-

tion except loans to members, and to perform such other duties as the members may from time to time authorize.

3. *Compensation.* No member of the board of directors or of the credit or supervisory committees shall receive any compensation for his services as a member of the board or committees. But the officers elected by the board of directors may receive such compensation as the members may authorize.

C. S., s. 5234; 1915, c. 115, s. 10.

574. Duties of credit committee. The credit committee shall approve every loan or advance made by the corporation to members. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired and the security offered. No loan shall be made unless it has received the unanimous approval of those members of the committee who were present when it was considered, who shall constitute at least a majority of the committee, nor if any member of the committee shall disapprove thereof; but the applicant for a loan may appeal from the decisions of the credit committee to the board of directors. The credit committee shall meet as often as may be required after due notice has been given to each member.

C. S., s. 5235; 1915, c. 115, s. 11.

575. Duties of supervisory committee. The supervisory committee shall inspect the securities, cash, and accounts of the corporation and supervise the acts of its board of directors, credit committee, and officers. At any time the supervisory committee, by a unanimous vote, may suspend the credit committee or any member of the board of directors, or any officer elected by the board, and by a majority vote may call a meeting of the shareholders to consider any violation of this subchapter or of the by-laws, or any practice of the corporation which, in the opinion of said committee, is unsafe and unauthorized. Within seven days after the suspension of the credit committee the supervisory committee shall cause notice to be given of a special meeting of the members to take such action relative to such suspension as may seem necessary. The supervisory committee shall fill vacancies in their own number until the next regular meeting of the members.

At the close of each fiscal year the supervisory committee shall make a thorough audit of the receipts, disbursements, income, assets, and liabilities of the corporation for the fiscal year, and shall make a full report thereon to the directors. This report shall be read at the annual meeting of the members and shall be filed and preserved with the records of the corporation.

C. S., s. 5236; 1915, c. 115, s. 12.

ART 12. SUPERVISION AND CONTROL.

576. Subject to superintendent of credit unions. Corporations organized under the provision of this subchapter shall be subject to the supervision of the superintendent of co-operative associations and credit unions.

C. S., s. 5237; 1915, c. 115, s. 7.

577. Annual reports; penalty. Every corporation organized under this subchapter shall, in January of each year, make a report for the previous calendar year to the superintendent of co-operative associations and credit unions, giving such information as he shall require, which report shall be verified by the oath of the president, treasurer and secretary, as well as by the oath of a majority of the members of the supervisory committee and it shall make such other and further reports under the like oath as the superintendent shall demand at any time.

Any such corporation which neglects to make an annual report within the month of January, or any of the other reports required by the superintendent of co-operative associations and credit unions at the time fixed by the superintendent, shall forfeit to the state five dollars for each day such neglect continues.

C. S., s. 5238; 1915, c. 115, s. 7.

578. Annual examinations required. The superintendent of co-operative associations and credit unions shall cause every such corporation to be examined once a year and whenever he deems it necessary. The examiners appointed by him shall be given free access to all books, papers, securities, and other sources of information in respect to the corporation; and for the purpose of such examination the superintendent shall have power and authority to subpoena and examine personally, or by one of his deputies or examiners, witnesses on oath and documents, whether such witnesses are members of the corporation or not, and whether such documents are documents of the corporation or not.

C. S., s. 5239; 1915, c. 115, s. 7.

579. Revocation of certificate. If any such corporation shall neglect to make its annual report, as provided in this article, for more than fifteen days, or shall fail to pay the charges required, including the fines for delay in filing reports, the superintendent of co-operative associations and credit unions shall give notice to such corporation of his intention to revoke the certificate of approval of the corporation for such neglect or failure, and if such neglect or failure continues for fifteen days after such no-

tice, the said superintendent shall, at his discretion, revoke the certificate, and he, personally or by one of his deputies, shall take possession of the property and business of the corporation and retain possession until such time as he may permit it to resume business, or until its affairs be finally liquidated as provided in the banking laws of the state.

C. S., s. 5240; 1915, c. 115, s. 7.

580. Deficits supplied; business discontinued. If it shall appear to the superintendent of co-operative associations and credit unions by any examination or report that any such corporation is insolvent, or that it has violated any of the provisions of this subchapter or any other law of the state, he may, by an order made over his hand and official seal, after a hearing or an opportunity for a hearing given the accused corporation, direct any such corporation to discontinue the illegal methods or practices mentioned in the order to make good any deficit. A deficit, in the discretion of the superintendent of co-operative associations and credit unions, may be made good by an assessment on the members in proportion to the shares held by each member. If any such corporation shall not comply with such order within sixty days after the same shall have been mailed to the last address filed by such corporation in the division of markets and rural co-operation, the superintendent shall thereupon take possession of the property and business of such corporation and retain such possession until such time as he may permit it to resume business or its affairs be finally liquidated, as provided in the banking laws of the state.

C. S., s. 5241; 1915, c. 115, s. 7.

SUBCHAPTER IV. CO-OPERATIVE ASSOCIATIONS.

ART. 13. ORGANIZATION OF ASSOCIATIONS.

581. Nature of the association. Any number of persons, not less than five, may associate themselves as a co-operative association, society, company, or exchange, for the purpose of conducting any agricultural, dairy, mercantile, mining, manufacturing, or mechanical business on the co-operative plan. For the purposes of this subchapter, the words association, company, corporation, exchange, society, or union shall be construed to mean the same.

C. S., s. 5242; 1915, c. 144, s. 1.

582. Use of term restricted. No corporation or association here-

inafter organized for doing business for profit in this state shall be entitled to use the term "co-operative" as part of its corporate or other business name or title, unless it has complied with the provisions of this subchapter; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any shareholder of any association legally organized under this subchapter.

C. S., s. 5243; 1915, c. 144, s. 18.

583. Articles of agreement. The persons desiring to organize such association shall sign and acknowledge written articles which shall contain the name of the association and the names and residences of the persons forming the same. Such articles shall also contain a statement of the purposes of the association and shall designate the city, town, or village where its principal place of business shall be located. The articles shall also state the amount of authorized capital stock, the number of shares subscribed, and the par value of each. No shareholder in any corporation organized under this subchapter shall be personally liable for any debt of the corporation.

C. S., s. 5244; 1915, c. 144, s. 2.

584. Certificate of incorporation. The original articles of incorporation of corporations organized under this subchapter, or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be filed with the secretary of state. A like verified copy of such articles and certificate of the secretary of state, showing the date when such articles were filed with and accepted by the secretary of state, within thirty days of such filing and acceptance, shall be filed with and recorded by the clerk of the superior court of the county in which the principal place of business of the corporation is to be located, and no corporation shall, until such articles be left for record, have legal existence. The clerk of court shall forthwith transmit to the secretary of state a certificate stating the time when such copy was recorded. Upon a receipt of such certificate, the secretary of state shall issue a certificate of incorporation.

C. S., s. 5245; 1915, c. 144, s. 3.

585. Fees for incorporation. For filing the articles of incorporation of corporations organized under this subchapter, there shall be paid the secretary of state ten dollars and his fees allowed by law, and for the filing of an amendment to such articles, five dollars and his fees allowed by law: Provided, that when the authorized capital stock of such corporations shall be less than

one thousand dollars, such fee for filing either the articles of incorporation or amendments thereto shall be two dollars. For recording copy of such articles, the clerk of court shall receive a fee of fifty cents, to be paid by the person presenting such papers for record.

C. S., s. 5246; 1915, c. 144, s. 4.

586. By-laws adopted. At the time of making the articles of incorporation the incorporators shall make by-laws which shall provide:

1. The name of the corporation.
2. The purposes for which it is formed.
3. Qualifications for membership.
4. The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting the meetings; the number of members which shall constitute a quorum at the meetings, and regulations as to voting.
5. The number of members of the board of directors; powers and duties; the compensation and duties of officers elected by the board of directors.
6. In the case of selling agencies or productive societies, regulations for grading.
7. In the case of selling agencies or productive societies, regulations governing the sale of products by the members through the organization.
8. The par value of the shares of capital stock.
9. The conditions upon which shares may be issued, paid in, transferred, and withdrawn.
10. The manner in which the reserve fund shall be accumulated.
11. The manner in which the dividends shall be determined and paid to members.

C. S., s. 5247; 1915, c. 144, s. 5.

587. General corporation law applied. All co-operative associations shall be maintained in accordance with the general corporation law, except as otherwise provided for in this subchapter.

C. S., s. 5248; 1915, c. 144, s. 17.

588. Other corporations admitted. All co-operative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all of the provisions of this subchapter, and be bound thereby on filing with the secretary of state a written declaration, signed and sworn to by the president and secretary to the effect that the co-operative

company or association has by a majority vote of its shareholders decided to accept the benefits of and to be bound by the provisions of this subchapter. No association organized under this subchapter shall be required to do or perform anything not specifically required herein, in order to become a corporation.

C. S., s. 5249; 1915, c. 144, s. 16.

ART. 14. STOCKHOLDERS AND OFFICERS.

589. Certificates for stock fully paid. Certificates of stock shall not be issued to any subscriber until fully paid, but the by-laws of the association may allow subscribers to vote as shareholders: Provided, part of the stock subscribed for has been paid in cash.

C. S., s. 5250; 1915, c. 144, s. 11.

590. Ownership of shares limited. No shareholder in any such association shall own shares of a greater aggregate par value than twenty per cent of the paid-in capital stock, except as hereinafter provided, or be entitled to more than one vote. A co-operative association shall reserve the right of purchasing the stock of any member whose stock is for sale, and may restrict the transfer of stock to such persons as are made eligible to membership in the by-laws.

C. S., s. 5251; 1915, c. 144, s. 9.

591. Shares issued on purchase of business. Whenever an association, created under this act, shall purchase the business of another association or person, it may pay for the same in whole or in part by issuing to the selling association or persons shares of its capital stock to an amount which at par value would equal the fair market value of the business so purchased, and in such case the transfer to the association of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued.

C. S., s. 5252; 1915, c. 144, s. 10.

592. Absent members voting. At any regularly called general or special meeting of the shareholders a written vote received by mail from any absent shareholder, and signed by him, may be read in such meeting, and shall be equivalent to a vote of such of the shareholders so signing; Provided, he has been previously notified in writing of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by him. In case of sickness or

other unavoidable absence of a member, he shall be allowed to vote by proxy in writing; but no member shall vote more than one such proxy.

C. S., s. 5253; 1915, c. 144, s. 12.

593. Directors and other officers. Every such association shall be managed by a board of not less than five directors. The directors shall be elected by and from the stockholders of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office for time for which elected and until their successors are elected and shall enter upon the discharge of such duties as are prescribed in the by-laws; but a majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director or officer so removed shall cease to be a director or officer of the association. The officers of every such association shall be a president, one or more vice-presidents, a secretary and treasurer, who shall be elected annually by the directors, and each of the officers must be a director of the association. The office of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer.

C. S., s. 5254; 1915, c. 144, s. 6.

ART. 15. POWERS AND DUTIES.

594. Nature of business authorized. An association created under this subchapter shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing, or mechanical business, on the co-operative plan.

C. S., s. 5255; 1915, c. 144, s. 8.

595. Amendment of articles. The association may amend its articles of incorporation by a majority vote of its shareholders at any regular shareholders' meeting, or any special shareholders' meeting called for that purpose, on ten days notice to the shareholders. The power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: Provided, the amount of the capital stock shall not be diminished below the amount of the paid-up capital at the time the amendment is adopted. Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be re-

corded in the office of the secretary of state and of the clerk of court of the county where the principal place of business is located.

C. S., s. 5256; 1915, c. 144, s. 7.

596. Apportionment of earnings. The directors, subject to revision by the association at any general or special meeting, shall apportion the earnings by first paying dividends on the paid-up capital stock, not exceeding six per cent per annum, then setting aside not less than ten per cent. of the net profits for a reserve fund, until an amount has been accumulated in the reserve fund equal to thirty per cent of the paid-up capital stock, and not less than two per cent thereof for an educational fund to be used in teaching co-operation, and the remainder of the net profits by uniform dividend upon the amount of purchases of shareholders and upon the wages and salaries of employees, and one-half of such uniform dividend to nonshareholders on the amount of their purchase, which may be credited to the account of such nonshareholders on account of capital stock of the association; but in selling agencies such as fruit, truck, peanuts, and cotton growers' association, and in productive associations such as creameries, canneries, warehouses, factories, and the like, dividends shall be prorated on raw materials delivered instead of on goods purchased. In case the association is both a selling and productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

C. S., s. 5257; 1915, c. 144, s. 13.

597. Time of distribution. The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the by-laws shall prescribe, which shall be as often as once in twelve months.

C. S., s. 5258; 1915, c. 144, s. 14.

598. Reports to secretary of state. Every association organized under the provisions of this subchapter shall annually, on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, amount of capital stock subscribed for and paid in, number of shareholders, total expenses of operation, amount of indebtedness or liabilities, and its profits and losses. A copy of such report shall also be filed with the division of markets and rural organization conducted by the "Joint Com-

mittee for Agricultural Work" of the state board of agriculture and the North Carolina State College of Agriculture and Engineering, as provided in the chapter on Agriculture.

C. S., s. 5259; 1915, c. 144, s. 15.

SUBCHAPTER V.

CO-OPERATIVE MARKETING OF FARM PRODUCTS.

599. Declaration of policy. In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through co-operation, and to eliminate speculation and waste; and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer; and to stabilize the marketing problems of agricultural products, this act is passed.

1921, c. 87, s. 1.

600. Definitions.

(a) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any farm products:

(b) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

(c) The term "association" means any corporation organized under this act; and

(d) The term "person" shall include individuals, firms, partnerships, corporations, and associations.

Associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

This act shall be referred to as the "Co-operative Marketing Act."

1921, c. 87, s. 2.

601. Who may organize. Five (5) or more persons engaged in the production of agricultural products may form a nonprofit, co-operative association, with or without capital stock, under the supervision of this act.

1921, c. 87, s. 3.

602. Purposes. An association may be organized to engage in any activity in connection with the marketing or selling of the

agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, of the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein.

1921, c. 87, s. 4.

603. Preliminary investigation. Every group of persons contemplating the organization of an association under this act is urged to communicate with the chief of the division of markets, who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

1921, c. 87, s. 5.

604. Powers. Each association incorporated under this act shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No association, however, shall handle the agricultural products of any nonmember.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights or ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f) To buy, hold, and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association, or incidental thereto.

(g) To do each and everything necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition, to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this act; and to do any such thing anywhere.

1921, c. 87, s. 6.

605. Members.

(a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations, organized hereunder.

1921, c. 87, s. 7.

606. Articles of incorporation. Each association formed under this act must prepare and file articles of incorporation, setting forth:

- (a) The name of the association.
- (b) The purposes for which it is formed.
- (c) The place where its principal business will be transacted.
- (d) The term for which it is to exist, not exceeding fifty (50) years.

(e) The number of directors thereof, which must not be less than five (5), and may be any number in excess thereof, and the term of office of such directors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules

applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and this association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or the vote of three-fourths of the members.

(g) If organized with capital stock, the amount of such stock and the number of such shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this state; and when so filed, the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the articles of incorporation shall also be filed with the chief of the division of markets.

1921, c. 87, s. 8.

607. Amendments to articles of incorporation. The articles of incorporation may be altered or amended at any regular meeting or any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors, and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation, when so adopted, shall be filed in accordance with the provisions of the general corporation law of this state.

1921, c. 87, s. 9.

608. By-laws. Each association incorporated under this act must, within thirty (30) days after its incorporation, adopt for its government and management a code of by-laws, not inconsistent with the powers granted by this act. A majority vote of the members or stockholders, or their written assent, is necessary

to adopt such by-laws. Each association under its by-laws may also provide for any or all of the following matters:

(a) The time, place, and manner of calling and conducting its meetings.

(b) The number of stockholders or members constituting a quorum.

(c) The right of members or stockholders to vote by proxy or by mail, or by both, and the conditions, manner, form, and effects of such votes.

(d) The number of directors constituting a quorum.

(e) The qualifications, compensations, and duties and terms of office of directors and officers; time of their election, and the mode and manner of giving notice thereof.

(f) Penalties for violations of the by-laws.

(g) The amount of entrance, organization, and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.

(h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him, and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.

(i) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and time when membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner, and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member the board of directors shall equitably and conclusively appraise his property interests in the association, and shall fix the amount thereof in

money, which shall be paid to him within one year after such expulsion or withdrawal.

1921, c. 87, s. 10.

609. General and special meetings; how called. In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent of the members or stockholders may file a petition stating the specific business to be brought before the association, and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting: Provided, however, that the by-laws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

1921, c. 87, s. 11.

• **610. Directors; election.**

(a) The affairs of the association shall be managed by a board of not less than five directors, elected by the members or stockholders from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts, and that the directors shall be elected according to such districts. In such case the by-laws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The by-laws may provide that primary elections should be held in each district to elect the directors apportioned to such districts, and the result of all such primary elections must be ratified by the next regular meeting of the association.

(b) The by-laws shall provide that one or more directors shall be appointed by the director of agricultural extension or any other public official or commission. The directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors.

(c) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common

stock of the association, or to any other kind of contract differing from terms generally current in that district.

(d) When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provide for an election of directors by district. In such case the board of directors shall immediately call a special meeting of the members of stockholders in that district to fill the vacancy: Provided, that this subsection shall not apply to the director or directors appointed under the provisions of subsection (b) of this section: Provided further, that any vacancy occurring in the office of a director appointed under subsection (b) of this section shall be filled in the same manner as the original appointment was made.

1921, c. 87, s. 12.

611. Election of officers. The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered an officer, but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

1921, c. 87, s. 13.

612. Stock; membership certificates; when issued; voting; liability; limitation on transfer of ownership.

(a) When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

(b) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not effect the members' right to vote.

(c) Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including

any unpaid balance on any promissory notes given in payment thereof.

(d) No stockholder of a co-operative association shall own more than one-twentieth of the common stock of the association; and an association, in its by-laws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the common stock.

(e) No member or stockholder shall be entitled to more than one vote.

(f) Any association organized with stock under this act may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

(g) The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

(h) The association may at any time, except when the debts of the association exceed fifty per cent (50%) of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors, and pay for it in cash within one (1) year thereafter.

1921, c. 87, s. 14.

613. Removal of officer or director. Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting, and shall have an opportunity at the meeting to be heard in person or by counsel, and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

In case the by-laws provide for election of directors by districts, with primary elections in each district, then the petition for removal of a director must be signed by twenty per cent of the members residing in the district from which he was elected. The

board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office: Provided, that this section shall not apply to directors appointed under subsection (b) of section twelve of this act.

1921, c. 87, s. 15.

614. Referendum. Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership of the stockholders for decision at the next special or regular meeting: Provided, however, that a special meeting may be called for the purpose.

1921, c. 87, s. 16.

615. Marketing contract.

(a) The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs and expenses, including interest on preferred stock, not exceeding eight per cent per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight per cent per annum upon common stock.

(b) The by-laws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state.

(c) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a degree of specified performance thereof. Pending the adjudication of such an action, and upon filing a verified

complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

1921, c. 87, s. 17.

616. Purchasing business of other associations, persons, firms, or corporations; payment; stock issued. Whenever an association organized hereunder with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may by agreement with the other party or parties to the transaction discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

1921, c. 87, s. 18.

617. Annual reports. Each association formed under this act shall prepare and make out an annual report on forms furnished by the division of markets, containing the name of the association, its principal place of business, and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up, and the number of stockholders of a stock association or the number of members and amount of membership fees received, if a nonstock association; the total expenses of operations; the amount of its indebtedness, or liability, and its balance sheets.

1921, c. 87, s. 19.

618. Conflicting laws not to apply. Any provisions of law which are in conflict with this act shall not be construed as applying to the associations herein provided for.

1921, c. 87, s. 20.

619. Limitation of use of term "co-operative." No person, firm, corporation, or association hereafter organized or doing business in this state shall be entitled to use the word "co-operative" as part of its corporate or other business name or title unless it has complied with the provisions of this act.

Any person, firm, corporation, or association now organized and existing, or doing business in this state, and embodying the word

“co-operative” as part of its corporate or other business name or title, and which is not organized in compliance with the provisions of this act, must, within six months from the date at which this act goes into effect, eliminate the word “co-operative” from its said corporate or other business name or title.

1921, c. 87, s. 21.

620. Interest in other corporations or associations. An association may organize, form, operate, own, control, have interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association, or to any other person, and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this state or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

1921, c. 87, s. 22.

621. Contracts and agreement with other associations. Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements, and make all necessary and proper stipulations, agreements and contracts and arrangements with any other co-operative corporation, association, or associations, formed in this or in any other state, for the co-operative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

1921, c. 87, s. 23.

622. Association heretofore organized may adopt the provisions of this act. Any corporation or association organized under previously existing statutes may, by a majority vote of its stockholders or members, be brought under the provisions of this act by limiting its membership and adopting the other restrictions

as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the secretary of state, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this act, articles of incorporation shall be filed as required in section eight, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

1921, c. 87, s. 24.

623. Misdemeanor; breach of marketing contract of co-operative associations; spreading false reports about the finances or management thereof. Any person or persons, or any corporation whose officers or employees knowingly induces or attempts to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000), for such offense and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars (\$500) for each such offense: Provided, that this section shall not apply to a bona fide creditor of any member or stockholder of such association, or the agents or attorney of any such bona fide creditor, endeavoring to make collection of the indebtedness.

1921, c. 87, s. 25.

624. Associations not in restraint of trade. No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contracts or agreements between the association and its members, or any agreements authorized in this act be considered illegal or in restraint of trade.

1921, c. 87, s. 26.

625. Constitutionality. If any section of this act shall be declared unconstitutional for any reason, the remainder of the act shall not be affected thereby.

1921, c. 87, s. 27.

626. Application of general corporation laws. The provisions of the general corporation laws of this state, and all powers

and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this act.

1921, c. 87, s. 28.

627. Annual license fees. Each association organized hereunder shall pay an annual license fee of ten dollars (\$10), but shall be exempt from all franchise or license taxes.

1921, c. 87, s. 29.

628. Filing fees. For filing articles of incorporation, an association organized hereunder shall pay ten dollars (\$10); and for filing an amendment to the articles, two dollars and one-half (\$2.50).

1921, c. 87, s. 30.

CHAPTER VII.

DRAINAGE BY CORPORATIONS.

ART. 1. MANNER OF ORGANIZATION.

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ART. 1. MANNER OF ORGANIZATION.

629. Petition filed in superior court. Any proprietor in fee of swamp lands, which cannot be drained except by cutting a canal through the lands of another or other proprietor in fee, situated at a lower level and which would also be materially benefited by the cutting of such canal, who desires that such canal be cut on the terms on which it is hereinafter allowed, may apply by petition, setting forth the facts, to the superior court of the county in which any of the lands through which the canal will pass may lie.

C. S., s. 5295; Bev., s. 3996; Code, s. 1311; 1868-9, c. 164, s. 2.

Drains § 81. When properly construed, section furnishes a summary method of collecting these assessments without resorting to the Superior Court. *Middle Canal Co. v. Whitley*, 172 N. C. 100, 90 S. E. 1.

630. Commissioners appointed; report required. On the establishment by the petitioner of his allegations, the court shall appoint three persons as commissioners who, having been duly sworn, shall examine the premises and inquire and report:

1. Whether the lands of the petitioner can be conveniently drained otherwise than through those of some other person.

2. Through the lands of what other persons a canal to drain the lands of the petitioner should properly pass, considering the interests of all concerned.

3. A description of the several pieces of lands through which the canal would pass, and the present values of such portions of

the pieces of lands as would be benefited by it, and the reasons for arriving at the conclusion as to the benefit.

4. The route and plan of the canal, including its breadth, depth, and slope, as nearly as they can be calculated, with all other particulars necessary for calculating its cost.

5. The probable cost of the canal and of a road on its bank, and of such other work, if any, as may be necessary for its profitable use.

6. The proportion of the benefit (after a deduction of all damages) which each proprietor would receive by the proposed canal and a road on its bank if deemed necessary, and in which each ought, in equity and justice, to pay toward their construction and permanent support.

7. With their report they shall return a map explaining, as accurately as may be, the various matters required to be stated in their report.

C. S., s. 5296; Rev., s. 3997; Code, s. 1312; 1868-9, c. 164, s. 3.

Drains § 76. Though no notice of meeting for preliminary inspection for drainage district was given, that is immaterial, where the assessment was duly ratified and confirmed at a subsequent meeting regularly called and held in accordance with statute.—*Middle Canal Co. v. Whitley*, 172 N. C. 100, 90 S. E. 1.

631. Surveyor employed. The commissioners may employ a surveyor to prepare the map required to accompany their report.

C. S., s. 5297; Rev., s. 3998; Code, s. 1313; 1868-9, c. 164, s. 4.

632. Confirmation of report. If it appear that the lands on the lower level will be increased in value twenty-five per cent or upwards by the proposed improvement, within one year after the completion thereof, and that the cost of making such improvement will not exceed three-fourths of the present estimated value of the land to be benefited, and that the proprietors of at least one-half in value of the land to be affected consent to the improvement, the court may confirm such report, either in full or with such modifications therein as shall be just and equitable.

C. S., s. 5298; Rev., s. 3999; Code, s. 1314; 1868-9, c. 164, s. 5.

633. Proprietors become a corporation. Upon a final adjudication, confirming the report, the proprietors of the several pieces of land adjudged to be benefited by the improvement shall be declared a corporation, of which the capital stock shall be double the estimated cost of the improvements, and in which the several owners of the land adjudged to be benefited shall be corporators, holding shares of stock in the proportions in which they are ad-

judged liable for the expense of making and keeping up the improvement.

C. S., 5299; Rev., s. 4000; Code, s. 1315; 1868-9, c. 164, s. 6.

634. Corporate name; officers; powers. The person assessed to pay the highest sum shall be president of the company until another shall be elected; he shall, or in case of his refusal or an unreasonable delay, any other stockholder may, call a meeting of the corporators. The corporators shall choose a corporate name, elect a president and such other officers as may be necessary and make all by-laws and regulations, not contrary to law, which may be necessary or proper for effecting the purposes of the corporation; they shall fix the number of shares of stock, and assign to each proprietor, his proper number; they shall assess the sums which shall be payable by each proprietor, and to ascertain the time and mode of payment in every meeting each proprietor shall vote once for each share owned by him.

C. S., s. 5300; Rev., s. 4001; Code, s. 1316; 1868-9, c. 164, s. 7.

635. Incorporation of canal already constructed. Whenever the proprietors of any canal already cut shall desire to become incorporated, any number of the proprietors, not less than one-third in number, may file their petition before the clerk of the superior court of the county in which the canal is located, or in either county, where the canal may be located in more than one county, setting forth the names of the proprietors, the length and size of the canal, the name of the owners of land draining in such canal, and the quantity of land tributary thereto. And upon filing the petition, summons shall issue to all parties having an easement in the canal, returnable as in other special proceedings; upon the return thereof, or upon a day fixed by the clerk for hearing same, all owners of the canal may become corporators therein, and upon failure of any to avail themselves of that right, they shall not be entitled to become corporators, except under such by-laws and regulations as such corporation shall make and declare. But those who fail to avail themselves of the benefit of this subchapter shall not be deprived of their easement in the canal, but shall enjoy the same upon payment to the corporation of the assessment made upon them pro rata with the corporators; such assessment shall be made on the land tributary to the canal and apportioned pro rata to each owner thereof; it shall be made by the corporation on ten days' notice to each owner of the land, under such rules and regulations as the by-laws may prescribe; but any person dissatisfied therewith shall have the right to ap-

peal to a jury at the regular term of the superior court of the county, and the amount of damages assessed shall be a first lien on the land of the owner against whom judgment shall be rendered: Provided, that in making such assessment upon land-owners who are not members of the corporation it shall be unlawful to charge in such assessment any charges or per diem pay for the officers of such canal company against the owner of such land, and any such attempt to charge the salaries of per diem of officers of the canal company in such assessment shall render the same void.

C. S., s. 5301; Rev., s. 4008; 1889, c. 380; 1901, c. 670.

ART. 2. RIGHTS AND LIABILITIES IN THE CORPORATION.

636. Shares of stock annexed to land. The ownership of the shares of stock is indissolubly annexed to the ownership of the pieces of land adjudged to be benefited by the improvement; and such shares, or a part thereof proportionate to the area of such land that may descend or be conveyed for any longer time than three years, shall, upon such descent or conveyance, descend and pass with the land, even although such shares be not mentioned in the deed of conveyance, and although their transfer be forbidden by such deed so that every owner of such land in possession, except tenant for a term of years, not exceeding three, and every owner in reversion or remainder after a term not exceeding three years, shall, during his ownership, be entitled to all the rights and privileges and be subject to all the obligations and burdens of a corporator. Every attempted sale of shares otherwise than as annexed to the land shall be void.

C. S., s. 5302; Rev., s. 4002; Code, s. 1317; 1868-9, c. 164, s. 8.

637. Shareholders to pay assessments. Every corporator shall be bound to obey the lawful by-laws of the company, and pay all dues lawfully assessed on him: Provided, he shall in no case pay more than his proportion of the expenses as fixed by this subchapter; and such dues may be collected in the corporate name in any court having jurisdiction; and every assessment duly docketed in the county where the land to be affected lies shall be a lien on the lands of the debtor which are connected with the corporation from the date of such docketing.

C. S., s. 5303; Rev., s. 4003; Code, s. 1318; 1868-9, c. 164, s. 9.

Drains § 82. A drainage assessment, unless void on its face, cannot be attacked collaterally.—Middle Canal Co. v. Whitley, 172 N. C. 100, 90 S. E. 1.

Drains § 82. If there is an irregularity in a drainage assessment which does not avoid it on its face, it is the duty of one assessed to appeal to the district for correction.—*Ibid.*

Drains § 88. The drainage district cannot sue the person assessed, the liability attaching to the land being collectible only by proceedings in rem in equity, nor, if the land is insufficient to pay the assessment, can the balance be collected from the landowner.—*Ibid.*

Drains § 90. A personal judgment cannot be rendered against landowner, since only land is liable.—*Long Creek Drainage Dist. v. Huffstetler*, 173 N. C. 523, 92 S. E. 368.

638. Name of districts. The name of such drainage district shall constitute a part of its corporate name; for illustration, the board of drainage commissioners of Mecklenburg Drainage District, No. 1. In the naming of a drainage district the clerk of the court, notwithstanding the name given in the petition, shall so change the name as to make it conform to the county within which the district, or the main portion of the district, is located, and be also designated by number, the number to indicate the number of districts petitioned for in the county. For illustration, the first district organized in Mecklenburg County would be Mecklenburg County Drainage District, No. 1; name of the second would be Mecklenburg County Drainage District, No. 2; the fifth one organized would be Mecklenburg County Drainage District, No. 5: Provided, that so much of this section as provides for numbering the districts in each county shall not apply to districts in which bonds have been issued and sold prior to the fifth day of March, one thousand nine hundred and seventeen.

C. S., s. 5338; 1909, c. 442, s. 19; 1917, c. 152, s. 17.

CHAPTER VIII.

RURAL COMMUNITIES.

ART. 1. ORGANIZED RURAL COMMUNITIES.

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ART. 1. ORGANIZED RURAL COMMUNITIES.

639. Petition for incorporation. The people of any rural community in North Carolina, upon petition signed by a majority of the registered voters of such community embracing in area one entire school district, may be incorporated under the provisions of this article, the title of such corporate body being "The-----Community of----- County" (or counties), the name of community and county (or counties) to be supplied in the petition for incorporation: Provided, that no part of such community shall be nearer than two miles to the nearest boundary of any incorporated town or city of five thousand or more inhabitants, and nothing in this article shall be construed to prevent the extension of the limits of any town or city regularly incorporated so as to include territory incorporated under this article. After any school district has been incorporated under the provisions of this article the boundaries of such school district and incorporated rural community may be changed

only in the manner prescribed by law for changing the lines of a special-tax school district, except that the county board of education shall proceed to enlarge such boundaries in accordance with law upon the written request of a majority of the school committeemen or trustees of said school district and a written request of a majority of the board of directors of the incorporated rural community.

C. S., s. 7380; 1919, c. 202, s. 1.

640. Certificate of incorporation. The petition for incorporation shall be addressed to the secretary of state at his office in Raleigh, who, if such petition is in due form, shall then issue the certificate of incorporation without charge therefor.

C. S., s. 7381; 1919, c. 202, s. 2.

Municipal Corporations § 18. Under the authority of the attorney-general to sue to annul the charter of a corporation on the ground that it was procured on a fraudulent suggestion or concealment of a material fact, he may sue to annul the charter of a rural community obtained on the false suggestion that it consisted of one entire school district, when in fact it was composed of parts of three.—*Manning v. Rama Rural Community*, 109 S. E. 576.

641. Community meetings. The registered voters of each community incorporated under the provisions of this article shall hold a public community meeting on the first Saturday in January of each year, or on such other day as may be specified in the petition for incorporation. The place of such meeting shall also be designated in the petition for incorporation; but the time or place, or both, may be changed at any annual meeting to take effect at the following annual meeting, notice of such change to be posted in three public places in such community. At such annual community meeting the voters may adjourn to meet at some other specified date, and other meetings may be held upon petition signed by ten per cent of the registered voters of the community, provided notice of such meeting is posted at three public places in such community at least two weeks prior to such meeting. Questions involving the levy of any tax, however, shall be decided only at the regular annual community meeting.

C. S., s. 7382; 1919, c. 202, s. 3.

642. Board of directors elected. At each annual community meeting, as provided in section 7382 (herein 641), the voters shall elect three persons to be known as the "Board of Directors of ---- Community," one of whom shall be designated as chairman and

another as secretary-treasurer, each performing the duties suggested by his title.

C. S., s. 7383; 1919, c. 202, s. 4.

643. Duties of board of directors; compensation. The board of directors of such community shall be charged with the duty of enforcing and executing such ordinances as the community meetings may adopt; and performing such other functions not inconsistent with the laws of North Carolina or the United States as the community meetings may direct. The annual compensation, if any, of such board of directors, or any member thereof, shall be fixed at each annual meeting.

C. S., s. 7384; 1919, c. 202, s. 5.

644. Legislative powers of communities. At each meeting of the registered voters of a community they shall have the right to adopt, amend, or repeal ordinances, provided such action is not inconsistent with the laws of North Carolina or the United States, concerning the following subjects: The public roads of the community; the public schools of the community; regulations intended to promote the public health; the police protection; the abatement of nuisances; the care of paupers, aged or infirm persons; to encourage the coming of new settlers; the regulation of vagrancy; aids to the enforcement of state and national laws; the collection of community taxes; the establishment and support of public libraries, parks, halls, playgrounds, fairs, and other agencies of recreation, education, health, music, art, and morals: Provided, that nothing herein contained shall be construed to mean that any community incorporated under the provisions of this article shall lose its identity as a part of the road and school systems of the county or counties in which it is located, nor lose its right to participate the same as before incorporation in the benefits to be derived from county or township funds raised by taxation or otherwise for building or maintaining the public roads, for the public schools, for public health, or for other public uses.

C. S., s. 7385; 1919, c. 202, s. 6.

645. Power to tax and to issue bonds. For the promotion of any of the objects mentioned in section 7385 (herein 644), the registered voters of any incorporated community, in annual community meeting assembled, shall have the right to levy taxes or issue bonds upon the property of the community, within limits hereinafter set forth, either for specific purposes or for the gen-

eral use of the community upon a method of tax division among varying objects as agreed upon by such annual community meeting. The aggregate of taxes levied for such community purposes shall not exceed five mills annually on each dollar of taxable property valuation of the community. Any tax imposed or levied under the provisions of this article may be revoked only in the manner prescribed by law for revoking special taxes in a special-tax school district.

C. S., s. 7386; 1919, c. 202, s. 7.

646. Majority vote for tax levy; collection. No community meeting may levy a tax unless a majority of the registered voters of the community are present at such meeting and vote by ballot for such tax; but at any annual community meeting a majority of the voters present, whatever their number, may vote to submit the question of levying such a tax to the qualified voters of the community at an election to be held not earlier than thirty days subsequent to such meeting. If the community meeting shall desire to submit separately the question of tax levy for different purposes, it shall mention a name of not more than six words by which each such tax shall be designated, as for example, "Road Tax," "Public Library Tax;" or such community meeting may submit the question of a tax levy for various purposes under the title "For Community Tax." At the election herein provided for each voter may deposit a ballot marked "For-----Tax" or "Against-----Tax;" and if a majority of the qualified voters of the community at such election shall vote for such tax, then the proposed tax levy shall be enforced and the tax collected at the same time and in the same manner as state and county taxes are now collected, or such incorporated community through its board of directors may name a collector of community taxes and fix his compensation, requiring both tax collector and treasurer to give bond for proper amounts.

C. S., s. 7387; 1919, c. 202, s. 8.

647. Directors may act as election officers; result certified to clerk of county commissioners. At any election herein provided for, the board of directors may act as election officers, judges of election, etc., and the ballots shall be counted, compared, canvassed and returned in the same manner as is now provided for general elections in the various counties of the state. The result of any such election shall be certified by the secretary of the board of directors of the community to the clerk of the board of

county commissioners, who shall record the same in the minutes of the said board of county commissioners, and no further recording or declaring of the result shall be necessary.

C. S., s. 7388; 1919, c. 202, s. 9.

648. Supervision by bureau of community service. The bureau of community service, now directed by the state departments of education, agriculture, and health, the state college of agriculture and engineering, and the state normal and industrial college, is hereby charged with the duty of securing from the communities of the state incorporated under this article reports as to what each community is doing for the promotion of the purposes mentioned in section 7382 (herein 644); and the aforesaid bureau of community service shall furnish the officers of such incorporated communities forms for keeping records, accounts, etc., and for making reports. The bureau shall also provide forms and instructions to citizens of the state desiring to petition for incorporation under the provisions of this article, and shall publish annually a summary of the work accomplished by incorporated communities. The members of the board of directors of such incorporated communities are required to render such reports to the bureau of community service, and to post copies of same, together with an itemized statement of receipts, disbursements, and balances for the year, in three public places in the community, under the penalty, upon conviction, of a fine of ten dollars each. All printing required under this article shall be paid for by the state department of education.

C. S., s. 7389; 1919, c. 202, s. 10.

649. Standards for production and marketing of produce. The board of directors may adopt standards for the production and marketing of produce, canned vegetables, etc., and may adopt labels, trade names, and brands for the same, and regulate their use, requiring the inhabitants of said community to comply with the standards set and adopted by the directors before they can use the brand, trade name, or labels for said community; and the board of directors may adopt such regulations as may be necessary to protect said brands, trade names, etc., may have an inspection of the goods sold thereunder, and may take any and all necessary steps looking to a system of community standard production, and of co-operative community marketing.

C. S., s. 7390; 1919, c. 202, s. 11.

650. Violation of community ordinances a misdemeanor; community magistrates. Any person violating any ordinance adopted under the provisions of this article or any rule made by the board of directors or other governing authority authorized by any of the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be imprisoned not exceeding thirty days or fined not exceeding fifty dollars, or both, at the discretion of the court. Any magistrate residing within the boundaries of a community incorporated under this article shall have power to hear and try all cases arising from violation of ordinances adopted by such community. If there is no magistrate residing within the boundaries of the community, or if the community shall desire an additional magistrate, there shall be nominated at each annual meeting some suitable person living within the confines of the community who shall, upon proper certification of nomination, be appointed community magistrate by the governor of the state, with all the powers of a magistrate within the bounds of said community.

C. S., s. 7391; 1919, c. 202, s. 12.

651. Police officers. The board of directors of any community organized under the provisions of this article are authorized and empowered to employ one or more policemen for the community, whose duties and powers shall be those prescribed by law for constables for the townships in the various counties of the state; and the said policemen shall receive as compensation the same fees that are now prescribed by law for constables.

C. S., s. 7392; 1919, c. 202, s. 13.

652. Precinct registrars to compile lists of registered voters. Each person charged with the duty of registering voters in an election precinct embraced in whole or in part in any incorporated community shall furnish the chairman of the board of directors of such incorporated community a complete list of the registered voters in his precinct at the preceding state election, and from such list the board of directors shall compile an official list of registered voters residing in the community for use in connection with the enforcement of this article; such registrar receiving one-half cent for each name so furnished, to be paid for by the community.

C. S., s. 7393; 1919, c. 202, s. 14.

ART. 2. ESTABLISHMENT OF CONVENIENCES IN RURAL COMMUNITIES.

653. Assistance by state highway commission. In order to assist in providing for better and more comfortable living conditions in the rural sections throughout the state, by means of the utilization of the many small water-powers that abound in many parts of the state, and by the installation of water systems in rural homes, and by the construction of rural telephone lines, the state highway commission is herewith authorized to advise and assist in providing a water supply and electric power and electric lights for rural communities and individuals outside of incorporated towns, by investigating water-powers and preparing plans for their development and the installation of such apparatus as may be needed to utilize such water-power in developing electric power and for supplying a water system and electric light system, and to furnish plans and specifications for the installation of rural telephone lines and to advise and assist in the formation of rural mutual telephone systems.

C. S., s. 7394; 1917, c. 267, s. 1.

654. Appropriation made. For the purpose of carrying out the provisions of this article there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of five thousand dollars annually, the sum to be drawn upon as directed by the state highway commission.

C. S., s. 7395; 1917, c. 267, s. 2.

ART. 3. BOND-ISSUING DISTRICTS INCORPORATED.

655. Various districts issuing bonds incorporated. The inhabitants of every road district, special road district, school district, graded school district, or other district, in the name of which, or on behalf of which, bonds or other evidences of indebtedness are authorized by law to be issued, shall, for all purposes relating to the issuance or payment of such bonds or other evidences of indebtedness, constitute a body politic and corporate under the name given by law to such district; and all such bonds or other evidences of indebtedness hereafter issued shall be obligations of such corporation. The board or body authorized by law to issue such bonds or other evidences of indebtedness may adopt a seal for such corporation, and shall, except as otherwise provided by law, have and exercise all the powers and perform all the duties of such corporation relating to the issuance or payment of such bonds or other evidences of indebtedness. This article shall not apply to any notes or bonds heretofore issued.

C. S., s. 360; 1919, c. 308.

CHAPTER IX.

WAREHOUSES.

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ART. 1. PUBLIC WAREHOUSES.

656. Who may become public warehousemen. Any person or any corporation organized under the laws of this state and whose charter authorizes it to engage in the business of a warehouseman, may become a public warehouseman and authorized to keep and maintain public warehouses for the storage of cotton, goods, wares, and other merchandise as hereinafter prescribed and upon giving the bond hereinafter required.

C. S., s. 5118; Rev., s. 3029; 1901, c. 678; 1919, c. 212.

657. Bond required. Every person or every corporation so organized under the preceding section, except such as shall have a capital stock of not less than five thousand dollars, to become a public warehouseman shall give bond in a reliable bonding or surety company, or an individual bond with sufficient sureties, payable to the state of North Carolina, in an amount not less than ten thousand dollars; to be approved, filed with and recorded by the clerk of the superior court of the county in which the warehouse is located, for the faithful performance of the duties of a public warehouseman; but if such person or corporation has a capital stock of not less than five thousand dollars, then it shall not be required to give the bond mentioned in this section.

C. S., s. 5119; Rev., s. 3030; 1901, c. 678, s. 2; 1905, c. 540; 1908, c. 56; 1919, c. 212.

658. Person injured may sue on bond. Whenever such warehouseman fails to perform any duty or violates any of the provisions of this chapter, any person injured by such failure or violation may bring an action in his name and to his own use in any

court of competent jurisdiction on the bond of said warehouseman.

C. S., s. 5120; Rev., s. 3031; 1901, c. 678, s. 3.

Warehousemen § 24. Warehousemen are liable under the general law for damages caused by their negligence.—*Motley v. The Southern Finishing Co.*, 124 N. C. 232, 32 S. E. 555.

Warehousemen § 34. The measure of damages for property damaged while in storage is the difference between the market value of the property damaged and the property whole, on the day it was delivered to the bailor.—*Motley v. Southern Finishing Co.*, 122 N. C. 347, 30 S. E. 3.

659. Insurance required; storage receipts. Every such warehouseman shall, when requested thereto in writing by a party placing property with it on storage, cause such property to be insured; every such warehouseman shall give to each person depositing property with it for storage a receipt therefor. All warehouse receipts issued by warehousemen complying with the provisions of this chapter shall be valid and binding in the hands of all bona fide holders for value without registration.

C. S., s. 5121; Rev., s. 3032; 1901, c. 678, s. 4; 1905, c. 540, s. 2.

660. Books of account kept; open to inspection. Every such warehouseman shall keep a book in which shall be entered an account of all its transactions relating to warehousing, storing, and insuring cotton, goods, wares, and merchandise, and to the issuing of receipts therefor, which books shall be open to the inspection of any person actually interested in the property to which such entry relates.

C. S., s. 5122; Rev., s. 3035; 1901, c. 678, s. 7.

661. Unlawful disposition of property stored. If any person unlawfully sells, pledges, lends, or in any other way disposes of or permits or is a party to the unlawful selling, pledging, lending, or other disposition of any goods, wares, merchandise, or anything deposited in a public warehouse without the authority of the party who deposited the same, he shall be punished by a fine not to exceed two thousand dollars and by imprisonment in the state's prison for not more than three years; but no officer, manager, or agent of such public warehouse shall be liable to the penalties provided in this section unless, with the intent to injure or defraud any person, he so sells, pledges, lends, or in any other way disposes of the same, or is a party to the selling, pledging, lending, or other disposition of any goods, wares, merchandise, article, or thing so deposited.

C. S., s. 5123; Rev., s. 3831; 1901, c. 678, s. 11.

ART. 2. LEAF TOBACCO WAREHOUSES.

662. Maximum warehouse charges. The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum.

C. S., s. 5124; Rev., s. 3042; 1895, c. 81.

663. Oath of tobacco weigher. All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of-----, and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.

C. S., s. 5125; Rev., s. 3043; 1895, c. 81, s. 2.

664. Warehouse proprietor to render bill of charges; penalty. The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charges or fees to be made or accepted. For each and every violation of the provisions of this article a penalty of ten dollars may be recovered by any one injured thereby.

C. S., s. 5126; Rev., s. 3044; 1895, c. 81, ss. 3, 4.

CHAPTER X.

RAILROADS.

ARTICLES OF ASSOCIATIONS, OFFICERS, AND STOCK OF RAILROADS.

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This chapter contains only the sections which relate to the organization of and requisites for doing business by railroads; and county aid for railroad construction.

665. Articles of association; contents; signature; filing. Any number of persons, not less than six, at least one of whom shall be a citizen and resident of this state, may form a company for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property, or for the purpose of maintaining and operating any unincorporated railroad already constructed for the like public use; and for that purpose may make and sign articles of association, in which shall be stated the name of the company, the number of years the same is to continue, the places from and to which the road is to be constructed or maintained and operated, the length of such road as near as may be, and the name of each county in this state through or into which it is made or intended to be made, the amount of the capital stock of the company, which shall not be less than five thousand dollars for every mile of road constructed or proposed to be constructed, and the number of shares of which the capital stock shall consist, and the names

and places of residence of six directors of the company, at least one of whom shall be a citizen and resident of this state, upon whom legal process may be served, who shall manage its affairs for the first year, or until others are chosen in their places. Each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in the company. On compliance with the provisions of the succeeding section, such articles of association may be filed in the office of the secretary of state, who shall indorse thereon the day they are filed, and record the same in a book to be provided by him for that purpose; and thereupon the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company, shall be a corporation by the name specified in such articles of association, and shall possess the powers and privileges granted to railroad corporations by this chapter. The articles of association of any company formed under the provisions of this chapter, or the charter of any railroad company formed under a special act of the General Assembly, may be amended as provided in sections 1130 and 1131 of said Consolidated Statutes (herein 52 and 53), and said sections 1130 and 1131 are hereby made to apply to railroad companies: Provided, no amendment may be made changing the nature of the company's business, extending its corporate existence or authorizing any powers other than those authorized by this chapter.

C. S., 3420; Rev., s. 2548; Code, s. 1932; 1871-2, c. 138; 1905, c. 187; 1907, c. 472, ss. 1, 2; 1921, c. 117.

Railroads § 14. Articles of association stating the length of the proposed road as 60 miles, and reporting only \$32,000.00 of stock as subscribed, and \$1,600.00 paid in, are void on their face.—Kinston & C. R. Co. v. Stroud, 132 N. C. 413, 43 S. E. 913.

Corporations § 29. Where the articles of association of a railroad corporation are on their face inoperative and void, the court may so declare them in a proceeding by the corporation to condemn land.—Ibid.

Corporations § 29. The act of the Secretary of State in filing and recording articles of association of a railroad company, when the articles are not such as are required by law, is a nullity.—Ibid.

666. Prerequisites of filing; stock subscription; affidavit of directors; payment of fees. Such articles of association shall not be filed and recorded in the office of the secretary of state until at least one thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto, and five per cent paid

thereon in good faith, and in cash, to the directors named in the articles of association; nor until there is indorsed thereon or annexed thereto an affidavit made by at least three of the directors named in such articles, that the amount of stock required by this section has been in good faith subscribed and five per cent paid in cash thereon as aforesaid, and that it is intended in good faith to construct or to maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association, as aforesaid; nor until said directors shall pay the taxes and fees provided for under the chapter Corporations, Article 11, entitled Taxes and Fees.

C. S., s. 3421; Rev., s. 2549; Code, s. 1933; 1871-2, c. 138, s. 2; 1905, c. 168.

Corporations § 29. The act of the Secretary of State in filing and recording articles of association of a railroad corporation, when the articles are not such as are required by law, is a nullity.—*Kinston & C. R. Co. v. Stroud*, 132 N. C. 413, 43 S. E. 913.

667. Copy of articles evidence of incorporation. A copy of any articles of association filed and recorded in pursuance of this article and of the record thereof, with a copy of the affidavit aforesaid indorsed thereon or annexed thereto, and certified to be a copy by the secretary of state, shall be presumptive evidence of the incorporation of such company, and of the facts therein stated.

C. S., s. 3422; Rev., s. 2550; Code, s. 1934; 1871-2, c. 138, s. 3.

See cases cited under section 5.

668. Opening of subscription books. When such articles of association and affidavit are filed and recorded in the office of the secretary of state, the directors named in such articles of association may, in case the whole of the capital stock is not before subscribed, open books of subscription to fill up the capital stock of the company in such places and after giving such notice as they may deem expedient, and may continue to receive subscriptions until the whole of the capital stock is subscribed.

C. S., s. 3423; Rev., s. 2551; Code, s. 1935; 1871-2, c. 138, s. 4.

669. How stock paid for; forfeiture for non-payment. The directors may require the subscribers to the capital stock of the company to pay the amounts by them respectively subscribed in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment as required by a resolution of the board of directors, the said board shall be authorized to declare his stock and all previous payments thereon forfeited for the use of the company, but they

shall not declare it so forfeited until they shall have caused a notice in writing to be served on him personally, or the same to be deposited in the postoffice, properly directed to him at the postoffice nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in such notice, and that if he fails to make the same, his stock and all previous payments thereon will be forfeited for the use of the company, which notice shall be served as aforesaid at least sixty days previous to the day on which payment is required to be made.

C. S., s. 3424; Rev., s. 2554; Code, s. 1938; 1871-2, c. 138, s. 7.

670. Increase of capital stock. In case the capital stock of any railroad company is found to be insufficient for constructing and operating its road, such company may, with the concurrence of two-thirds in amount of all its stockholders, increase its capital stock from time to time to any amount required for the purposes aforesaid. Such increase must be sanctioned by a vote in person or by proxy of two-thirds in amount of all the stockholders of the company, at a meeting of such stockholders called by the directors of the company for that purpose, by a notice in writing to each stockholder, to be served on him personally or by depositing the same, properly folded and directed to him at the postoffice nearest his usual place of residence, in the postoffice at least twenty days prior to such meeting. Such notice must state the time and place of the meeting and its object and the amount to which it is proposed to increase the capital stock. The proceedings of such meeting must be entered on the minutes of the proceedings of the company, and thereupon the capital stock of the company may be increased to the amount sanctioned by a vote of two-thirds in amount of all the stockholders of the company aforesaid.

C. S., s. 3425; Rev., s. 2555; Code, s. 1939; 1871-2, c. 138, s. 9.

671. Liability for unpaid stock to laborers; notice to stockholder. Each stockholder of any such company shall be individually liable to the creditors of such company to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company until the whole amount of the capital stock so held by him shall have been paid to the company, and all the stockholders of any such company shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contractors, for personal

services for thirty days' service performed for such company, but shall not be liable to an action therefor before an execution shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such execution shall be the amount recoverable with costs against such stockholder. Before such laborer or servant shall charge such stockholders for such thirty days service he shall give them notice in writing within twenty days after the performance of such service that he intends to hold them liable, and shall commence such action therefor within thirty days after the return of such execution unsatisfied as above mentioned; and every such stockholder, against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in such corporation in ratable proportion to the amount of the stock they shall respectively hold with himself.

C. S., s. 3426; Rev., s. 2556; Code, s. 1940; 1871-2, c. 138, s. 10.

672. Liability of trustees and other fiduciaries holding stock.

No person holding stock in any such company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company. The estates in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name, and a person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly.

C. S., s. 3427; Rev., s. 2557; Code, s. 1941; 1871-2, c. 138, s. 11.

673. Directors and president. There shall be a board of six directors, one of whom shall be elected president, of every corporation formed under this article, to manage its affairs. The directors shall be chosen annually by a majority of the votes of the stockholders voting at such election, in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue in office until others are elected in their places. In the election of directors each stockholder shall be entitled to one vote personally or by proxy on every share held by him thirty days previous to any such election, and vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation. The inspectors of the first election of directors shall be appointed by the board

of directors named in the articles of association. No person shall be a director or president unless he shall be a stockholder owning stock absolutely in his own right and qualified to vote for directors at the election at which he shall be chosen; and at every election of directors the books and papers of such company shall be exhibited to the meeting, if a majority of the stockholders present shall require it.

C. S., s. 3428; Rev., s. 2552; Code, s. 1936; 1871-2, c. 138, s. 5.

674. Appointment of officers and agents. The president and directors shall appoint a treasurer and secretary and such other officers and agents as shall be prescribed by the by-laws.

C. S., s. 3429; Rev., s. 2553; Code, s. 1937; 1871-2, c. 138, s. 6.

675. Officials to account to successors. The president and directors of the several railroads, and all persons acting under them, are hereby required upon demand to account with the president and directors elected or appointed to succeed them, and shall transfer to them forthwith all the money, books, papers, choses in action, property and effects of every kind and description belonging to such company.

C. S., s. 3430; Rev., s. 2648; Code, s. 2001; 1870-1, c. 72, ss. 1, 3.

676. Failure of certain railroad officers to account with successors. If the president and directors of any railroad company, and any person acting under them, shall, upon demand, fail or refuse to account with the president and directors elected or appointed to succeed them, and to transfer to them forthwith all the money, books, papers, choses in action, property and effects of every kind and description belonging to such company, they shall be guilty of a felony, and shall be punished by imprisonment in the state's prison for not less than one nor more than five years, and be fined at the discretion of the court. All persons conspiring with any such president, directors or their agents to defeat, delay or hinder the execution of this section shall be guilty of a misdemeanor, and shall be punished in like manner. The governor is hereby authorized, at the request of the president, directors and other officers of any railroad company, to make requisition upon the governor of any other state for the apprehension of any such president failing to comply with this section.

C. S., s. 4400; Rev., s. 3760; Code, ss. 2001, 2002; 1870-1, c. 72, ss. 1-3.

Section has reference only to money, choses in action, property and effects belonging to the company.—*State v. Jones*, 67 N. C. 210.

677. Counties may subscribe stock. The boards of commission-

ers of the several counties shall have power to subscribe stock to any railroad company when necessary to aid in the construction of any railroad in which the citizens of the county may have an interest.

C. S., s. 3431; Rev., s. 2558; Code, s. 1996; 1868-9, c. 171, s. 1.

Statutes § 18. Constitutional requirements respecting the passage of acts allowing counties, etc., to issue bonds, are mandatory, and compliance therewith is essential to the validity of such acts.—Wittkowsky v. Board of Com'rs of Jackson County, 150 N. C. 90, 63 S. E. 275.

Towns § 52. Bonds issued by a township to aid the construction of a railroad cannot be sustained under above section authorizing county commissioners to subscribe for railroad stock to aid in the completion of railroads.—Ibid.

Counties § 173. If county commissioners can subscribe for railroad stock to aid in completing a railroad, the power could not be exercised to fix a debt on one or more townships of the county, though the road ran through one township only.—Ibid.

Towns § 52. Statute cannot be applied to authorize the issuance of bonds by a township in aid of a road not yet begun.—Graves v. Moore County Com'rs, 135 N. C. 49, 47 S. E. 134.

Counties § 173. Statute does not authorize county to order an election to determine whether bonds shall be issued to aid a railroad on which no work had been done when the election was ordered.—Commissioners of Buncombe County v. Payne, 123 N. C. 432, 31 S. E. 711.

678. On dissolution or sale of railroads purchaser becomes a corporation. When any railroad corporation shall be dissolved or its property sold and conveyed under any execution, deed of trust, mortgage or other conveyance, the owner or purchaser shall constitute a new corporation upon compliance with law.

C. S., s. 3463; Rev., s. 2565; Code, s. 2005.

Corporations § 603. In order that the sale of the franchise and property of a corporation under mortgage shall have the effect of a dissolution of such corporation as provided in Section 697 of the Code (herein 153), another corporation must be provided to take its place, and assume and discharge the obligations to the public growing out of the grant of the franchise, and until that is done the old corporation continues to exist and when it is done the new corporation will be a domestic corporation.—James v. Western North Carolina R. Co., 121 N. C. 523, 28 S. E. 537.

(In this connection see the case of Julian, Sheriff, and James, Administratrix, v. Central Trust Co., and Southern Railway Co., cited under Section 153.)

679. Roads not to be established unless authorized by law. If any person or corporation, not being expressly authorized thereto, shall make or establish any canal, turnpike, tramroad, railroad or plank-road, with the intent that the same shall be used to transport passengers other than such persons, or the members of such corporation, or to transport any productions, fabrics or manu-

factures other than their own, the person or corporation so offending, and using the same for any such purpose, shall forfeit and pay fifty dollars for every person and article of produce so transported.

This section shall not apply to any narrow-gauge railroad, tramroad or toll road made and established and maintained solely by the owner of the lands upon which said road may be, the principal business of which is the transportation of logs, lumber and articles for the owners of such railroad or tramroad: Provided, that the corporation commission shall have power to authorize lumber companies, having logging roads, to transport all kinds of commodities other than their own and passengers and to charge therefor reasonable rates to be approved by said commission.

C. S., s. 3413; Rev., s. 2598; Code, s. 1717; R. C., c. 61, s. 37; 1874-5, c. 83; 1901, c. 282; 1907, c. 531; 1911, c. 160; 1915, c. 6.

Corporations § 487. Where standing timber was conveyed to a corporation at a reduced price in consideration of its covenant to build a railroad, which it repudiated on the ground that it was ultra vires, the grantor could recover the difference between the contract price and the actual value of the timber.—Herring v. Wallace Lumber Company, 163 N. C. 481, 79 S. E. 876; Herring v. Cumberland Lumber Company, 159 N. C. 382, 74 S. E. 1011.

680. Actions for penalties to be in name of state. All penalties imposed by this chapter may, unless otherwise provided, be sued for in the name of the state.

C. S., s. 3415; Rev., s. 2647; Code, s. 1976; 1885, c. 221.

See Harmon v. Ferguson Contracting Company, 159 N. C. 22, 74 S. E. 632; Robertson v. Atlantic Coast Line Railroad Co., 148 N. C. 323, 62 S. E. 413.

CHAPTER XI.

INSURANCE.

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This chapter contains the statutes relating to the organization of insurance companies and the conditions precedent for doing business.

SUBCHAPTER I. INSURANCE DEPARTMENT.

ART. 1. TITLE AND DEFINITIONS.

681. Terms defined. When consistent with the context and not obviously used in a different sense, the term "company" or "insurance company," as used in this chapter, includes all corporations, associations, partnerships, or individuals engaged as principals in the business of insurance; the word "domestic" designates those companies incorporated or formed, and with home office, in this state; and the word "foreign," when used without limitation, includes all those formed by authority of any other state or government, and whose home office is not located in this state.

C. S., s. 6261; Rev., s. 4678; 1899, c. 54, s. 1.

Our statutes relating to the regulation and supervision of insurance companies by the insurance commissioner use the words insurance companies, associations, and orders, and clearly contemplates both incorporated and unincorporated companies.—State v. Arlington, 157 N. C. 640, 73 S. E. 122.

682. Contract of insurance. A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent or to do some act of value to the insured upon, and as an indemnity for, the destruction, loss, or injury of something in which the other party has an interest.

C. S., s. 6262; Rev., s. 4679; 1899, c. 54, s. 2.

ART. 2. UNDER SUPERVISION OF INSURANCE
COMMISSIONER.

683. Authority over all insurance companies; no exemptions from license. Every insurance company, association or order, as well as every bond, investment, dividend, guarantee, registry, title guarantee, debenture, or such other like company (not strictly an insurance company, as defined in the general insurance laws), must be licensed and supervised by the insurance commissioner, and must pay all licenses, taxes, and fees as prescribed in the insurance laws of the state for the class of company, association, or order to which it belongs. No provision in any statute, public or private, may relieve any company, association, or order from the supervision prescribed for the class of companies, associations, or orders of like character, or release it from the pay-

ment of the licenses, taxes, and fees prescribed for companies, associations, and orders of the same class; and all such special provisions or exemptions are hereby repealed. It is unlawful for the insurance commissioner to grant or issue a license to any company, association, or order, or agent for them, claiming such exemption from supervision by his department and release for the payment of license, fees, and taxes.

C. S., s. 6274; Rev., s. 4691; 1903, c. 594, ss. 1, 2, 3.

State v. Arlington, 157 N. C. 640, 73 S. E. 122.

684. Examinations to be made. Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance the commissioner shall be satisfied, by such examination and evidence as he sees fit to make and require, that the company is otherwise duly qualified under the laws of the state to transact business therein. As often as once in three years he shall personally or by his deputy visit each domestic insurance company and thoroughly inspect and examine its affairs, especially as to its financial condition and ability to fulfill its obligations and whether it has complied with the laws. He shall also make an examination of any such company whenever he deems it prudent to do so, or upon the request of five or more of the stockholders, creditors, policyholders, or persons pecuniarily interested therein, who shall make affidavit of their belief, with specifications of their reasons therefor, that the company is in an unsound condition. Whenever the commissioner deems it prudent for the protection of policyholders in this state he shall in like manner visit and examine, or cause to be visited and examined by some competent person appointed by him for that purpose, any foreign insurance company applying for admission or already admitted to do business in this state, and such company shall pay the proper charges incurred in this examination, including the expenses of the commissioner or his deputy and the expenses and compensation of his assistants employed therein. For these purposes the commissioner or his deputy or persons making the examination shall have free access to all the books and papers of the insurance company that relate to its business, and to the books and papers kept by any of its agents, and may summon, administer oaths to, and examine as witnesses, the directors, officers, agents, and trustees of any such company, and any other persons, in relation to its affairs, transactions, and condition.

C. S., s. 6275; Rev., s. 4692; 1899, c. 54, s. 13.

685. Oath required for compliance with law. Before issuing license to any insurance company to transact the business of insurance in this state, the insurance commissioner shall require, in every case, in addition to the other requirements provided for by law, that the company file with him the affidavit of its president or other chief officer that it has not violated any of the provisions of this chapter for the space of twelve months last past, and that it accepts the terms and obligations of this chapter as a part of the consideration of the license.

C. S., s. 6276; Rev., s. 4693; 1899, c. 54, s. 110; 1901, c. 391, s. 8.

686. Investigation of charges. Upon complaint being filed by a citizen of this state that a company authorized to do business in the state has violated any of the provisions of this chapter, the insurance commissioner shall diligently investigate the matter, and, if necessary, examine, under oath, by himself or his accredited representative, at the head office located in the United States, the president and such other officer or agents of such companies as may be deemed proper; also all books, records and papers of the same. He or his deputies shall have power to summon witnesses and to compel them to appear before him, or either of them, and to testify under oath in relation to any matter, which is by the provision of this act, a subject of inquiry and investigation, and may require the production of any book, paper, document or other matter whatsoever deemed pertinent or necessary to such inquiry with the same force and effect as is possessed by courts of record in this state.

For the purpose of carrying out the provisions of this act the insurance commissioner is authorized to employ a competent person or persons to make such investigations, and to provide for such expenses, including compensation of deputies, as may be incurred in said investigations, the sum of five thousand dollars (\$5,000) is hereby annually appropriated.

C. S., s. 6277; Rev., s. 4694; 1899, c. 54, s. 111; 1903, c. 438, s. 11; 1921, c. 136, s. 4.

687. Collection of expenses of examination. If any company, authorized to do business in this state under this chapter, fails or refuses to pay the expenses of examination upon the presentation of a bill therefor by the insurance commissioner, the commissioner shall at once institute appropriate action against the company for the recovery of the same.

C. S., s. 6278; Rev., s. 4695; 1899, c. 54, s. 113.

688. Commissioner to prescribe form and furnish blanks for returns. It is the duty of the insurance commissioner to furnish blank forms for statements, which forms may be changed by him from time to time when necessary to secure full information as to standing, condition, and such other information desired of companies under his department. The following, or such other forms as he prescribes, shall be used:

1. Return of stock companies, other than life companies.

1. State the name of company. 2. Where located. 3. When incorporated, and for what period. 4. Amount of capital. 5. Amount of capital actually paid in. 6. Cash value of real estate owned. 7. Amount loaned on mortgage on real estate. 8. Amount and description of each kind of bonds and stocks owned, with par and market value. 9. Amount loaned on collateral, with par and market value of each security pledged. 10. Amount of cash on hand. 11. Amount of gross premiums in course of collection. 12. Amount of bills receivable, not matured, taken for premiums. 13. Amount of all other property or investments. 14. All outstanding losses. 15. Amount of unearned premiums on policies in force. 16. All other liabilities and claims against the company. 17. Amount of cash received for premiums. 18. Amount of notes received for premiums. 19. Amount received for interest and rents. 20. Amount of income received from all other sources. 21. Amount paid for losses. 22. Amount paid for dividends. 23. Amount paid for expenses. 24. All other expenditures. 25. Amount of risks written, terminated, and in force with gross premiums thereon.

2. Return of mutual companies, other than life.

1. State the name of company. 2. Where located. 3. When incorporated, and for what period. 4. Amount of guaranteed capital, if any. 5. Cash value of real estate owned. 6. Amount loaned on mortgage of real estate. 7. Amount and description of each kind of stocks and bonds owned, with par and market value. 8. Loans, on collateral, with par and market value of each security pledged. 9. Cash in office and in bank. 10. Gross premiums in course of collection. 11. All other loans, investments, and property. 12. Premium notes liable to assessment. 13. Amount of scrip outstanding. 14. All outstanding losses. 15. Unearned premiums. 16. Dividends declared and unpaid. 17. Bor-

rowed money. 18. All other liabilities and claims against the company. 19. Cash received for premiums. 20. Cash received for interest and rent. 21. Premium notes received. 22. Income from all other sources. 23. Amount paid for losses. 24. Amount paid for expenses. 25. Surplus returned to policyholders. 26. All other expenditures. 27. Scrip dividends declared. 28. Amount of risks written, terminated, and in force, with gross premiums thereon.

3. Return of life insurance companies.

1. The name of the company. 2. Where located. 3. When incorporated, and for what period. 4. Amount of capital stock or guaranteed fund. 5. Cash value of real estate owned. 6. Amount loaned on mortgages of real estate. 7. Amount and description of each kind of bonds and stocks owned, with their par and market value. 8. Loans on collateral, with par and market value of each security pledged. 9. Cash in bank and in office. 10. Premium notes and loans on policies in force. 11. Outstanding and deferred premiums on policies in force. 12. All other loans, investments, and property. 13. All outstanding losses and policy claims. 14. Dividends of surplus due policyholders. 15. Forfeitures and surplus accrued, held for and to be divided to any special class of policyholders; surplus accrued in policies in force not yet distributed. 16. All other liabilities and claims against the company. 17. Cash received for premiums. 18. Cash received for interest and rents. 19. Income from all other sources. 20. Amount paid for losses and claims. 21. Dividends of surplus to policyholders. 22. Amount paid for expenses. 23. All other expenditures. 24. Number, date, amount, and kind of each outstanding policy not heretofore returned, gross premium thereon, and age of the insured. 25. Number, date, and amount of each policy which has within the year ceased to be in force, now terminated, what has been paid to the legal holder of the policy, and the age of the insured.

C. S., s. 6279; Rev., s. 4708; 1899, c. 54, s. 104.

689. Annual statements to be filed with commissioner. Every insurance company, association, or order—domestic, through its officers, and foreign, through its general agent—shall file in the office of the insurance commissioner, on or before the first day of March in each year, in form and detail as the insurance com-

missioner prescribes, a statement showing the business standing and financial condition of such company, association, or order on the preceding thirty-first day of December, signed and sworn to by the chief managing agent or officer thereof, before the insurance commissioner or some officer authorized by law to administer oaths. The insurance commissioner shall, in December of each year, furnish to each of the insurance companies authorized to do business in the state two or more blanks adapted for their annual statements.

C. S., s. 6280; Rev., s. 4698; 1899, c. 54, ss. 72, 73, 83, 97, 90; 1901, c. 706, s. 2; 1903, c. 438, s. 9.

690. Punishment for making false statement. If any insurance company in its annual or other statement required by law shall wilfully misstate the facts, the insurance company and the person making oath to or subscribing the same shall severally be punished by a fine of not less than five hundred nor more than one thousand dollars.

C. S., s. 6281; Rev., s. 3493; 1899, c. 54, s. 97.

691. Commissioner to examine statements and publish abstracts. It is the duty of the insurance commissioner to receive and thoroughly examine each annual statement required by this chapter, and, if made in compliance with the laws of this state, to publish, at the expense of the company, an abstract of the same in one of the newspapers of the state, which newspaper may be selected by the general agent making the statement, if within thirty days after the filing of the statement he notifies the insurance commissioner, in writing, of the name of the paper selected by him.

C. S., s. 6282; Rev., s. 4699; 1899, c. 54, s. 74; 1901, c. 391, s. 6.

ART. 3. GENERAL REGULATIONS FOR INSURANCE.

692. State law governs insurance contracts. All contracts of insurance on property, lives, or interests in this state shall be deemed to be made therein; and all contracts of insurance the applications for which are taken within the state shall be deemed to have been made within this state and are subject to the laws thereof.

C. S., s. 6287; Rev., s. 4806; 1899, c. 54, s. 2; 1901, c. 705, s. 1.

Insurance § 712. A certificate in a mutual benefit association issued to a citizen of North Carolina is deemed to have been made within the state and subject to its laws.—*Williams v. Supreme Conclave Improved Order of Heptasophs*, 172 N. C. 787, 90 S. E. 888.

Insurance § 712. A contract between a foreign mutual benefit association and a member taking out a policy through a domestic lodge is a North Carolina contract governed by the North Carolina statutes in force when he became a member.—*Wilson v. Supreme Conclave Improved Order of Heptasophs*, 174 N. C. 628, 94 S. E. 443.

Insurance § 712. A provision in a contract of insurance that, "This contract shall be governed by, subject to and construed only according to the laws of the State of New York, the place of this contract being expressly agreed to be the home office of said association in the city of New York," is void so far as the courts of this state are concerned.—*Blackwell v. Mutual Reserve Fund Life Ass'n*, 141 N. C. 117, 53 S. E. 833.

Section referred to in *Cottingham v. Maryland Motor Car Ins. Co.*, 168 N. C. 259, 84 S. E. 275.

693. No insurance contracts except under this chapter. It is unlawful for any company to make any contract of insurance upon or concerning any property or interest or lives in this state, or with any resident thereof, or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance, unless and except as authorized under the provisions of this chapter.

C. S., s. 6288; Rev., s. 4807; 1899, c. 54, s. 2.

694. Statements in application not warranties. All statements or descriptions in any application for a policy of insurance, or in the policy itself, shall be deemed representations and not warranties, and a representation, unless material or fraudulent, will not prevent a recovery on the policy.

C. S., s. 6289; Rev., s. 4808; 1901, c. 705, s. 2.

Insurance §§ 687, 723. Section is applicable to certificate of fraternal benefit association incorporated under the laws of another state, providing for death benefits in excess of \$300.00.—*Gay v. Woodmen of the World*, 179 N. C. 210, 102 S. E. 195.

Insurance § 668. Whether the hernia which insured had when he stated he was in sound condition was of such nature as to render him unsound is a question of fact for the jury.—*Hines v. New England Casualty Co.*, 172 N. C. 225, 90 S. E. 131.

Insurance § 330. Under a policy of insurance prohibiting incumbrances or changes in title or interest, a chattel mortgage held merely to suspend the insurance, which, therefore, revived upon payment and cancellation of the mortgage.—*Cottingham v. Maryland Motor Car Ins. Co.*, 168 N. C. 259, 84 S. E. 274.

Insurance § 292. Where an applicant for life insurance stated he had not consulted a physician for two years preceding the application, but the evidence showed that he had been under treatment of several physicians during those two years, such misrepresentation was material, and avoids the policy.—*Schas v. Equitable Life Assur. Society*, 166 N. C. 55, 81 S. E. 1014; *Bryant v. Metropolitan Life Ins. Co.*, 147 N. C. 181, 60 S. E. 983.

Master & Servant § 78. Contract of membership in a railroad company's relief department held not a contract of insurance within this section; and a knowingly false statement did not defeat a recovery unless made to deceive and fraudulently mislead the company.—*Daughtridge v. Atlantic Coast Line R. Co.*, 165 N. C. 188, 80 S. E. 1080.

Insurance § 299. Where an applicant for insurance falsely stated that within a year he had not been intimately associated with any one suffering from a transmissible disease, such misrepresentation avoiding the policy, unless the insurer waived the same with full knowledge of the facts.—*Gardner v. North State Mut. Life Ins. Co.*, 163 N. C. 367, 79 S. E. 806.

Insurance § 300. A misrepresentation by an applicant for life insurance that he had never been examined for insurance and rejected is material, and, if false, avoids the policy.—*Hardy v. Phoenix Mut. Life Ins. Co.*, 167 N. C. 569, 83 S. E. 801.

Insurance § 291. A statement in an application for life insurance that applicant had never had any disease of the kidneys is a material representation; and the untruth of which is a defense to the policy, irrespective of fraud.—*Alexander v. Metropolitan Life Ins. Co.*, 150 N. C. 536, 64 S. E. 432.

695. Stipulations as to jurisdiction and limitation of actions.

No company or order, domestic or foreign, authorized to do business in this state under this chapter, may make any condition or stipulation in its insurance contracts concerning the court or jurisdiction wherein any suit or action thereon may be brought, nor may it limit the time within which such suit or action may be commenced to less than one year after the cause of action accrues or to less than six months from any time at which a plaintiff takes a nonsuit to an action begun within the legal time. All conditions and stipulations forbidden by this section are void.

C. S., s. 6290; Rev., s. 4809; 1899, c. 54, ss. 23, 106; 1901, c. 391, s. 8.

Insurance § 622. The provision that no company or order shall make any conditions in its insurance contract limiting the time within which suit may be brought to less than one year, is in furtherance of police power of the state, and all contracts covered by its terms are subject to its provisions, and are in no way modified or affected by the provision in a bond that obligations of surety shall be construed strictly as one of suretyship only.—*Guilford Lumber Mfg. Co. v. Johnson*, 177 N. C. 44, 97 S. E. 732.

Insurance § 622. The provision of a fire policy requiring action within 12 months after the fire is reasonable and valid.—*Holly v. London Assur. Corporation*, 170 N. C. 4, 86 S. E. 694.

Insurance § 812. Benefit society laws limiting the bringing of actions on certificates to one year from accruing of action is valid.—*Faulk v. Fraternal Mystic Circle*, 171 N. C. 301, 88 S. E. 431.

Insurance § 622. Where indemnity bond limited time for actions to 6 months after time for filing claim, and gave the employee thirty days in which to make good any loss, it is held that the employer could sue within one year and thirty days after the discovery of a default.—*Dixie Fire Ins. Co. v. American Bonding Co.*, 162 N. C. 385, 78 S. E. 430.

Insurance § 622. The provision that no insurance company shall limit the time in which suit shall be brought on a policy to less than one year, a stipulation in an accident policy that no legal proceedings shall be brought to recover any sum hereby insured within ninety days after receipts of proof, nor at all unless commenced within one year after date of alleged accident, will be construed to give an assured 12 months after his right of action accrued, which would be a year after time for filing proof of loss, plus 90 days.—*Heilig v. Aetna Life Ins. Co.*, 152 N. C. 358, 67 S. E. 927.

Insurance § 622. Under an accident policy stipulating that an action must be brought within one year after the right of action accrued, infancy does not stop limitations, since, by suing on the contract, the infant affirms it, and therefore is bound by its terms.—*Ibid.*

696. Insurance as security for a loan by the company. Where an insurance company, as a condition for a loan by such company, of money upon mortgage or other security, requires that the borrower insure either his life or that of another, or his property, or the title to his property, with the company, and assign or cause to be assigned to it a policy of insurance as security for the loan, and agree to pay premiums thereon during the continuance of the loan, whether the premium is paid annually, semiannually, quarterly, or monthly, such premiums shall not be considered as interest on such loans, nor will any loan be rendered usurious by reason of any such requirements, where the rate of interest charged for the loan does not exceed the legal rate and where the premiums charged for the insurance do not exceed the premiums charged to other persons for similar policies who do not obtain loans.

C. S., s. 6291; 1915, c. 8; 1917, c. 61.

697. Companies must do business in own name. Every insurance company, foreign or domestic, must conduct its business in the state in, and the policies and contracts of insurance issued by it shall be headed or entitled only by, its proper or corporate name.

C. S., s. 6292; Rev., s. 4811; 1899, c. 54, s. 18.

698. Publication of assets and liabilities; penalty for failure. When any company publishes its assets it must in the same connection and with equal conspicuousness publish its liabilities computed on the basis allowed for its annual statements; and any publications purporting to show its capital must exhibit only the amount of such capital as has been actually paid in cash. Any company or agent thereof violating the provisions of this section shall be punished by a fine of not less than fifty nor more than two hundred dollars.

C. S., s. 6293; Rev., ss. 3492, 4812; 1899, c. 54, ss. 18, 96.

699. Liabilities and reserve fund determined. To determine the liability of an insurance company, other than life and real estate title insurance, upon its contracts, and thence the amount such company must hold as a reserve for reinsurance, the insurance commissioner shall take the actual unearned portion of the premiums written in its policies. In case of the insolvency of any company, the reserve on outstanding policies may, with the consent of the commissioner, be used for the reinsurance of its policies to the extent of their pro rata part thereof.

C. S., s. 6294; Rev., s. 4704; 1899, c. 54, s. 67; 1901, c. 391, s. 5; 1907, c. 1000, s. 4.

700. Revocation of license of foreign company; publication of notice. If the insurance commissioner is of the opinion, upon examination or other evidence, that a foreign insurance company is in an unsound condition, or, if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities; or that it has failed to comply with the law, or if it, its officers or agents, refuse to submit to examination or to perform any legal obligation in relation thereto, or if any foreign insurance company applies to have removed from the superior court of any county of this state to the United States circuit or district court any action instituted against it, or institutes any action at law or suit in equity in a United States court against any citizen of this state, growing out of or in any way connected with any policy of insurance issued by such insurance company, he shall revoke or suspend all certificates of authority granted to it or its agents, and shall cause notifications thereof to be published in one or more newspapers published in this state; and no new business may thereafter be done by it or its agents in this state while such default or disability continues, or until its authority to do business is restored by the commissioner.

C. S., s. 6295; Rev., s. 4701; 1899, c. 54, s. 14; 1901, c. 176, s. 1.

Insurance § 20. The Insurance Commissioner is not authorized to revoke the license of a foreign insurance company applying for a removal to the Federal Court of a suit brought against it by a former agent for services.—*Pacific Mut. Ins. Co. v. Insurance Department*, 144 N. C. 442, 57 S. E. 120.

Const. Law § 307. A state statute providing that the license of a foreign corporation shall be revoked for removing cases to the federal court is in violation of the United States Constitution and is therefore void.—*Terral, Secretary of State of Arkansas, v. Burke Construction Co.*, 42 S. Ct. 188.

701. Revocation of license of domestic company; injunction and receiver. If, upon examination, the insurance commissioner is of the opinion that any domestic insurance company is insolvent,

or has exceeded its powers, or failed to comply with any provision of law, or that its condition is such as to render its further proceeding hazardous to the public or to its policyholders, he shall revoke its license, and, if he deems it necessary, shall apply to a judge of the superior court to issue an injunction restraining it in whole or in part from further proceeding with its business. The judge may issue the injunction forthwith, or upon notice and hearing thereon, and after a full hearing of the matter may dissolve or modify the injunction or make it permanent, and may make all orders and judgments needful in the matter, and may appoint agents or a receiver to take possession of the property and effects of the company and to settle its affairs, subject to such rules and orders as the court from time to time prescribes

C. S., s. 6296; Rev., s. 4702; 1899, c. 54, s. 14.

702. Revocation of license for violation of law or impaired assets. 1. The authority of a domestic or foreign insurance company may be revoked if it violates or neglects to comply with any provision of law obligatory upon it, and whenever in the opinion of the insurance commissioner its condition is unsound, or its assets above its liabilities, exclusive of capital and inclusive of reserve or unearned premiums estimated as provided by this chapter, are less than the amount of its original capital or required unimpaired funds.

2. If the insurance commissioner is satisfied at any time that any statements made by any company licensed under this chapter are untrue, or if a general agent fails or refuses to obey the provisions of this chapter, the insurance commissioner may revoke and cancel such license.

An insurance company violating any provision of this chapter, or refusing to submit to the examination provided for in section 6277 of this chapter (686 herein), when requested, forfeits its right to do business in this state for twelve months thereafter, and the insurance commissioner shall immediately revoke the license issued to such insurance company to do business in this state.

C. S., s. 6297; Rev., ss. 4703, 4705; 1899, c. 54, ss. 66, 75, 112; 1901, c. 391, s. 5.

703. Agents and adjusters must procure license. Every agent or adjuster of any insurance company authorized to do business in this state shall be required to obtain annually from the insurance commissioner a license under the seal of his office, showing that the company for which he is agent or proposes to adjust is licensed to do business in this state, and that he is an agent of

such company and duly authorized to do business for it. And every such agent or adjuster, on demand, shall exhibit his license to any officer or to any person from whom he shall solicit insurance.

C. S., s. 6298; Rev., s. 4706; 1899, c. 54, s. 81; 1901, c. 391, s. 7; 1903, c. 438, s. 8, c. 774; 1915, c. 109, s. 7, c. 166, s. 1.

704. Application for license. Before a license is issued to an insurance agent or adjuster in this state, the agent or adjuster and the company for which he desires to act shall apply for the license on forms to be prescribed by the insurance commissioner; and before he issues a license to such agent or adjuster, the insurance commissioner shall satisfy himself that the person applying for license as an agent or adjuster is a person of good moral character, that he intends to hold himself out in good faith as an insurance agent or adjuster, and has sufficient knowledge of the business proposed to be done, that he has not wilfully violated any of the insurance laws of this state, and that he is a proper person for such position.

C. S., s. 6299; 1913, c. 79, s. 1; 1915, c. 109, ss. 6, 7, c. 166, s. 7.

705. Power of commissioner to revoke license. When the insurance commissioner is satisfied that any insurance agent or adjuster licensed by this state has wilfully violated any of the insurance laws of this state, or has wilfully overinsured property of any of the citizens of the state, or has wilfully misrepresented any policy of insurance, or has dealt unjustly with or wilfully deceived any citizen of this state in regard to any insurance policies, or has failed or refused to pay over to the company which he represents, or has represented, any money or property in the hands of such agent or adjuster belonging to the company, when demanded, or has in any other way become unfit for such position, the commissioner may revoke, and it shall be his duty to revoke, the license of such agent or adjuster for all the companies which he represents in this state for such length of time as he may decide, not exceeding one year. The insurance commissioner shall give to the agent or adjuster ten days notice of the revocation of such license, and shall give the reasons therefor; and the agent or adjuster shall have the right to have such revocation reviewed by any judge of the superior court of Wake county upon appeal. For the purpose of investigation under this section, the insurance commissioner shall have all the powers conferred upon him by section 6431 of this chapter (Consolidated Statutes).

C. S., s. 6300; 1913, c. 79, ss. 2, 3; 1915, c. 166, s. 7.

706. Non-resident agents forbidden; exception. No non-resident of the state shall be licensed to do business in the state, except as a special agent or organizer, and then only when he reports his business for record as North Carolina business to some general or district agent of his company in the state, or having territory within the state.

C. S., s. 6301; Rev., s. 4707; 1899, c. 54, s. 108; 1903, c. 438, s. 11.

ART. 4. DEPOSIT OF SECURITIES.

707. Deposits held in trust by commissioner or treasurer.

1. *Deposits by domestic company.* The insurance commissioner or the treasurer, in their official capacity, shall take and hold in trust deposits made by any domestic insurance company for the purpose of complying with the laws of any other state to enable the company to do business in that state. The company making the deposit is entitled to the income thereof, and may, from time to time, with the consent of the insurance commissioner or treasurer, and when not forbidden by the law under which the deposit was made, change in whole or in part the securities which compose the deposit for other solvent securities of equal par value. Upon request of any domestic insurance company such officer may return to the company the whole or any portion of the securities of the company held by him on deposit, when he is satisfied that they are subject to no liability and are not required to be longer held by any provision of law or purpose of the original deposit.

2. *Deposits by foreign company.* The commissioner or treasurer may return to the trustees or other representatives authorized for that purpose any deposit made by a foreign insurance company, when it appears that the company has ceased to do business in the state and is under no obligation to policyholders or other persons in the state for whose benefit the deposit was made.

3. *Action to enforce or terminate the trust.* An insurance company which has made a deposit in this state pursuant to this chapter, or its trustees or resident managers in the United States, or the insurance commissioner, or any creditor of the company, may at any time bring an action in the superior court of Wake county against the state and other parties properly joined therein, to enforce, administer, or terminate the trust created by the deposit. The process in this action shall be served on the officer of

the state having the deposit, who shall appear and answer in behalf of the state and perform such orders and judgments as the court may make in such action.

C. S., s. 6313; Rev., s. 4709; 1899, c. 54, s. 17; 1901, c. 391, s. 2; 1903, c. 438, s. 1; 1903, c. 536, s. 4.

708. Deposits subject to approval and control of commissioner.

The deposits of securities required to be made by any insurance company of this state shall be approved by the insurance commissioner of the state, and he may examine them at all times, and may order all or any part thereof changed for better security, and no change or transfer of the same may be made without his assent.

C. S., s. 6314; Rev., s. 4710; 1903, c. 536, s. 5.

709. Deposits by foreign companies required and regulated.

A foreign company, if incorporated or associated under the laws of any government or state other than the United States or one of the United States, shall not be admitted to do business in this state until, in addition to complying with the conditions by law prescribed for the licensing and admission of such companies to do business in this state, it has made a deposit with the treasurer or insurance commissioner of this state, or with the financial officer of some other state of the United States, of a sum not less than the capital required of like companies under this chapter. This deposit must be in exclusive trust for the benefit and security of all the company's policyholders and creditors in the United States, and may be made in the securities, but subject to the limitations, specified in this chapter with regard to the investment of the capital of domestic companies formed and organized under the provisions of this chapter. The deposit shall be deemed for all purposes of the insurance law the capital of the company making it.

C. S., s. 6315; Rev., s. 4711; 1899, c. 54, s. 64; 1903, c. 438, s. 6.

710. Deposits by life companies not chartered in United States.

Every life insurance company organized under the laws of any other country than the United States must have and keep on deposit with some state insurance department or in the hands of trustees, in exclusive trust for the security of its contracts with policyholders in the United States, funds of an amount equal to the net value of all its policies in the United States and not less than two hundred thousand dollars.

C. S., s. 6316; Rev., s. 4712; 1899, c. 54, s. 56.

711. Deposits by foreign fire insurance companies; amount and nature of deposit required. Unless otherwise provided in this article, every fire insurance company chartered by any other state or foreign government shall, by their general agent or through some authorized officer, deliver under oath to the insurance commissioner of this state a statement of the amount of capital stock of the company, and deposit with him bonds of the United States, or of the state of North Carolina, or of the cities or counties of this state, or first mortgages on real estate situated in this state to be approved by the insurance commissioner, as follows: Companies whose capital stock is five hundred thousand dollars or less, ten thousand dollars; companies whose capital stock is more than five hundred thousand dollars and not over one million dollars, twenty thousand dollars; companies whose capital stock is in excess of one million dollars, twenty-five thousand dollars; and the insurance commissioner shall thereupon give the agent a receipt for the same. With securities so deposited the company shall at the same time deliver to the insurance commissioner a power of attorney authorizing him to transfer said securities or any part thereof for the purpose of paying any of the liabilities provided for in this article. The insurance commissioner shall require each company to make good any depreciation or reduction in value of the securities. The securities required to be deposited by each insurance company in this article shall be delivered for safe-keeping by the insurance commissioner to the treasurer of the state, who shall receipt him therefor. For securities so deposited the faith of the state is pledged that they shall be returned to parties entitled to receive them or disposed of as hereinafter provided for. The securities deposited by any company under this article shall not, on account of such securities being in the state, be subjected to taxation, but shall be held exclusively and solely for the protection of contract holders.

C. S., s. 6442; 1909, c. 923, s. 1; 1911, c. 164, s. 1; Ex. Sess. 1913, c. 62, ss. 1, 2, 3; 1915, c. 166, s. 6.

ART. 5. LICENSE FEES AND TAXES.

712. Schedule of license fees, taxes, and charges. The insurance commissioner shall collect and pay into the state treasury fees, taxes, and charges as follows:

1. For each license issued to: a life insurance company or association, two hundred and fifty dollars; a fire insurance company or association, or to any company or association of companies operating a separate or distinct plant of agencies, two hundred

dollars; an accident insurance company or association, two hundred dollars; a marine insurance company or association, two hundred dollars; a surety insurance company or association or mutual fire insurance company doing only one class of fire insurance business, two hundred dollars; a plate-glass insurance company or association, two hundred dollars; a boiler insurance company or association, two hundred dollars; a domestic mutual insurance company, fifty dollars; a domestic mutual insurance company, operating in not more than two counties, ten dollars; reciprocals or inter-insurers, one hundred dollars; to a fraternal order, twenty-five dollars; a bond, investment, dividend, guarantee, registry, title guarantee or debenture company, two hundred dollars; all other insurance companies or associations, two hundred dollars. An underwriters agency, composed of two or more companies, proposing to do a reinsurance business only in the state may be licensed without a separate license for each company, upon filing with the insurance commissioner a statement of each company, the amount proposed to be assumed by them, and such other information as he may call for, showing that the companies are solvent and propose to conduct the business in a way that would be safe and fair to the citizens of the state.

Provided, that so much of said license fees collected from fire insurance companies as may be necessary shall be used by the insurance commissioner for the prevention of fire waste and accidents.

2. All of said companies shall pay a tax of two and one-half per centum upon the amount of their gross receipts in this state, with no deduction for dividends, whether returned in cash or allowed in payment or reduction of premiums, or for additional insurance, and without any deduction except for return premiums: Provided, that if any general agent or officer of a company shall file with the insurance commissioner a sworn statement showing that at least one-fourth of the entire assets of his company are invested in and are maintained in any or all of the following securities or property, viz.: bonds of this state or of any county, city or town in this state or any property situated in this state and returned for taxation therein, or in loans to its North Carolina policyholders against the reserve on their policies, then the tax shall be one per centum upon the gross premium receipts aforesaid, and the license fee shall be one-half that named above: and if the amount so invested shall be three-fourths of its total assets, the tax shall be one-quarter of one per centum of its gross premium receipts and the license fee shall be one-half that named

above: Provided, that if such company is chartered in this state and maintains its main office herein, then if the amount so invested shall be equal to its total reserve on business derived from this state, the tax shall be one-quarter per centum upon the gross premium receipts in this state, and the license fee shall be one-half that named above.

Query: Does Bethlehem Motors Corporation et al v. Flynt, Sheriff, et al, 256 U. S. 421, 41 S. Ct. 571, render the foregoing provision for graduation of license tax unconstitutional?

Companies paying the tax levied in this section shall not be liable for franchise tax on their capital stock, and no county, city or town shall be allowed to impose any additional tax, license or fee. The license fees and taxes imposed in this section shall be paid to the insurance commissioner and by him paid into the state treasury as provided by law.

3. He shall collect annually for license issued each special or district agent or manager or organizer (including seal) five dollars; for license, including seal to each local or canvassing agent, two dollars; but any such company having assets invested and maintained as provided in this section shall only be charged for such license, one dollar. And for each special agent's license, two dollars and fifty cents. In case of loss or destruction of such license the insurance commissioner, for a fee of fifty cents, may certify to its issuance, giving number, date and form which may be used by the original party named therein in lieu of said original license. There shall be no charge for the seal affixed to such certificate or said license.

Individuals, firms and corporations exchanging reciprocal or inter-insurance contracts as provided herein, shall pay through their attorneys an annual license of one hundred dollars and two and one-half per centum of the gross premium deposits, reduced by all sums distributed among the subscribers, or credited to their account, and also other regular fees.

Every person, firm, association, or corporation operating what are known as Morris plan companies, or doing a similar business in this state, shall pay an annual tax of twenty-five dollars. Said tax shall be paid to the insurance commissioner and by him into the state treasury as other license, taxes and fees collected by him.

4. Annually twenty dollars for each license issued to a resident broker, authorized to procure insurance in nonadmitted companies, and also a tax of five per centum on his gross premium receipts.

5. For filing and examining statement preliminary to admission, twenty dollars; for filing and auditing annual statement, ten dollars; for filing any other papers required by law, one dollar; for each certificate of examination, condition, or qualification of company or association, two dollars; for each seal when required, one dollar; for each examination of domestic company, twenty-five dollars; for each examination of foreign company, fifty dollars; for filing charter and other papers of a fraternal order, preliminary to admission, twenty-five dollars.

6. To be paid to the publisher, for the publication of each financial statement, nine dollars.

7. The commissioner shall receive for copy of any record or paper in his office ten cents per copy sheet and one dollar for certifying same, or any fact or data from the records of his office; for making and mailing abstracts to the clerks of the superior courts in the counties of the state, four dollars; for examination of any foreign company, twenty-five dollars per diem and all expenses, and for examining any domestic company, actual expenses incurred; for the examination and approval of charters of companies, five dollars; also, to defray the expense of computing the value of the policies of domestic life insurance companies, one cent for every thousand dollars of the whole amount insured by its policies so valued.

8. He shall collect all other fees and charges due and payable into the state treasury by any company, association, order, or individual under his department.

C. S., s. 6318; Rev., s. 4715; 1899, c. 54, ss. 50, 68, 80, 81, 82, 87, 90, 92; 1901, c. 391, s. 7, c. 706, s. 2; 1903, c. 438, ss. 7, 8; 1903, c. 536, s. 4; 1903, cc. 680, 770; 1905, c. 588, s. 68; 1913, c. 140, s. 1; 1919, c. 186, s. 6; 1920, c. 1, s. 7 j, 7 k, 7 i; 1921, c. 34, s. 67.

Insurance § 20. A tax of $2\frac{1}{2}$ per cent. upon the amount of gross receipts of insurance companies from the business done within the state is a license or franchise tax for the privilege of doing business in the state.—Pittsburgh Life & Trust Co. v. Young, 172 N. C. 470, S. E. 568.

Insurance § 20. The privilege to continue to reinsure in the state, by receiving renewal premiums from time to time as they mature or become due, is "doing business" in the state.—Ibid.

713. No additional charge by counties or towns. No county or municipality may impose an additional tax, license, or fee upon any insurance company or agent.

C. S., s. 6319; Rev., s. 4716; 1899, c. 54, s. 79; 1901, c. 391, s. 7; 1903, c. 438, s. 8.

714. License fees for more than one class of insurance. No insurance company admitted to do business in the state shall be authorized to transact more than one class or kind of insurance

therein, unless it pays the license fees for each class. But upon the payment of the largest license fees provided in this chapter for any one business done a life insurance company may do a health business, and a fire insurance company may insure against loss or damage to property by lightning, wind, hail, or tornado, use and occupancy, and for nonoccupancy, and may insure vessels, freights, goods, money, effects, and money lent on bottomry or respondentia against the perils of the sea and other perils usually insured against by marine insurance, including risks of inland navigation and transportation; and may also insure against loss or damage by water to any goods or premises arising from leakage of sprinklers and water-pipes. No insurance company may be required to pay license fees amounting in the aggregate to more than three hundred and fifty dollars per annum.

C. S., s. 6320; Rev., s. 4717; 1899, c. 54, s. 65; 1901, c. 391, s. 5; 1903, c. 438, s. 6.

715. Licenses run from April first; pro rata payment. The licenses required by this chapter shall continue for the next ensuing twelve months after April first of each year, unless revoked as provided in this chapter; but the insurance commissioner may, when the annual license tax exceeds twenty-five dollars, receive from applicants after April first so much of the license fee required by law as may be due pro rata for the remainder of the year, beginning with the first day of the current month.

C. S., s. 6321; Rev., s. 4718; 1899, c. 54, s. 78.

716. Statements of gross receipts filed and tax paid. Every general agent shall, within the first thirty days of January and July of each year, make a full and correct statement, under oath of himself and of the president, secretary, or some officer at the home or head office of the company in this country, of the amount of the gross receipts derived from the insurance business under this chapter obtained from residents of this state, or on property located therein during the preceding six months, and shall, within the first fifteen days of February and August of each year, pay to the insurance commissioner the tax imposed by this chapter upon such gross receipts.

C. S., s. 6322; Rev., s. 4719; 1899, c. 54, s. 79; 1901, c. 391, s. 7; 1903, c. 438, s. 8.

717. Policyholders to furnish information. To enable the insurance commissioner the better to enforce the payment of the taxes imposed by this chapter, every corporation, firm, or individual doing business in the state shall, upon demand of the commissioner, furnish to him, upon blanks to be provided by him, a

statement of the amount of all insurance held by them, giving the name of the company, number, and amount of policies and the premiums paid on each, and such other information as the commissioner calls for, or shall file an affidavit with the commissioner that all their insurance is placed in companies licensed to do business in this state.

C. S., s. 6323; Rev., s. 4720; 1899, c. 54, s. 79; 1901, c. 391, s. 7; 1903, c. 438, s. 8.

SUBCHAPTER II. INSURANCE COMPANIES.

ART. 6. GENERAL DOMESTIC COMPANIES.

718. Application of this chapter and general laws. The general provisions of law relative to the powers, duties, and liabilities of corporations apply to all incorporated domestic insurance companies where pertinent and not in conflict with other provisions of law relative to such companies or with their charters. All insurance companies of this state shall be governed by this chapter, notwithstanding anything in their special charters to the contrary, provided notice of the acceptance of this chapter is filed with the insurance commissioner.

C. S., s. 6324; Rev., s. 4721; 1899, c. 54, s. 19.

719. Extension of existing charters. Domestic insurance companies incorporated by special acts, whose charters are subject to limitation of time, shall, after the limitation expires, and upon filing statement and paying the taxes and fees required for an amendment of the charter, continued to be bodies corporate, subject to all general laws applicable to such companies.

C. S., s. 6325; Rev., s. 4722; 1899, c. 54, s. 20.

720. Certificate required before issuing policies. No domestic insurance company may issue policies until upon examination of the insurance commissioner, his deputy or examiner, it is found to have complied with the laws of the state, and until it has obtained from the insurance commissioner a certificate setting forth that fact and authorizing it to issue policies, the issuing of policies in violation of this section renders the company liable to the forfeiture prescribed by law, but such policies are binding upon the company.

C. S., s. 6326; Rev., s. 4723; 1899, c. 54, ss. 21, 99; 1903, c. 438, s. 10.

721. Purposes of organization. Insurance companies, associations, or orders may be formed as provided in the two next succeeding sections for any one of the following purposes:

1. *Fire and storm.* To insure against loss or damage to prop-

erty by fire, lightning, wind, hail, or tornado, use and occupancy, and for nonoccupancy, upon the stock or mutual plan.

2. *Marine.* To insure, upon the stock or mutual plan, vessels, freights, goods, money, effects, and money lent on bottomry or respondentia against the perils of the sea and other perils usually insured against by marine insurance, including risks of inland navigation and transportation.

3. *Life.* To carry on the business commonly known as life insurance on the stock or mutual plan, contract for the payment of endowments or annuities, or make and enter into such other contracts conditioned upon the continuance or cessation of human life.

4. *Sickness.* Against disablement resulting from sickness and every insurance appertaining thereto.

5. *Accident.* Against injury, disablement, or death resulting from traveling or general accident and every insurance appertaining thereto.

6. *Fidelity and surety.* Guaranteeing the fidelity of persons holding places of public or private trust, and guaranteeing the performance of contracts other than insurance policies, and guaranteeing and executing all bonds, undertakings, and contracts of suretyship. And a company is authorized to execute such bonds, undertakings, and contracts of suretyship by itself, though a statute requires two or more sureties.

7. *Plate-glass.* Upon glass against breakage.

8. *Liability.* Insuring any one against loss or damage resulting from accident to or injury, fatal or nonfatal, suffered by an employee or other person, for and which the person insured is liable.

9. *Boiler and machinery.* Upon steam boilers and upon pipes, engines, and machinery connected therewith or operated thereby, against explosion and accident and against loss or damage to life, person, or property resulting therefrom. And a company is authorized to make inspection of and to issue certificates of inspection upon such boilers, pipes, engines, and machinery.

10. *Burglary.* Against loss by burglary or theft, or both.

11. *Credit.* To carry on the business commonly known as credit insurance or guaranty, either by agreeing to purchase uncollectible debts or otherwise to insure against loss or damage from the failure of persons indebted to the insured to meet their liabilities.

12. *Sprinkler.* To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water-pipes. And a company is authorized to

make inspection of and to issue certificates of inspection upon such sprinklers and pipes.

13. *Accidents to vehicles.* To insure against loss or damage to property arising from accidents to elevators, automobiles, bicycles, and vehicles, except rolling stock of railways.

14. *Live-stock.* To insure horses and other live-stock against death and damage.

15. *Real estate title.* For the purpose of examining titles to real estate and furnishing information in relation thereto, and of insuring owners and others interested therein against loss by reason of encumbrances and defective title.

16. *Miscellaneous.* Against any other casualty authorized by the charter of the company, not included under the heads of life, fire, marine, or title insurance, which is a proper subject of insurance. No corporation so formed may transact any other business than that specified in its charter and articles of association.

C. S., s. 6327; Rev., s. 4726; 1899, c. 54, ss. 24, 26; 1903, c. 438, s. 1; 1911, c. 111, s. 1.

722. Manner of creating such corporations. The procedure for organizing such corporations is as follows: The proposed incorporators, not less than ten in number, a majority of whom must be residents of the state, shall subscribe articles of association setting forth their intention to form a corporation; its proposed name, which must not so closely resemble the name of an existing corporation doing business under the laws of this state as to be likely to mislead the public, and must be approved by the insurance commissioner; the class of insurance it proposes to transact and on what business plan or principle; the place of its location within the state, and if on the stock plan, the amount of its capital stock. The words "insurance company," "insurance association," or "insurance society" must be a part of the title of any such corporation and also the word "mutual," if it is organized upon the mutual principle. The certificate of incorporation must be subscribed and sworn to by the incorporators before an officer authorized to take acknowledgment of deeds, who shall forthwith certify the certificate of incorporation, as so made out and signed, to the insurance commissioner of the state at his office in the city of Raleigh. The insurance commissioner shall examine the certificate, and if he approves of it and finds that the requirements of the law have been complied with, shall certify such facts, by certificate on such articles, to the secretary of state. Upon the filing in the office of the secretary of state of the certificate of incorporation and attached certificates, and the pay-

ment of a charter fee in the amount required for private corporations, and the same fees to the secretary of state, the secretary of state shall cause the certificate and accompanying certificates to be recorded in his office, and shall issue a certificate in the following form:

Be it known that, whereas (here the names of the subscribers to the articles of association shall be inserted) have associated themselves with the intention of forming a corporation under the name of (here the name of the corporation shall be inserted), for the purpose (here the purpose declared in the articles of association shall be inserted), with a capital (or with a permanent fund) of (here the amount of capital or permanent fund fixed in the articles of association shall be inserted), and have complied with the provisions of the statute of this state in such case made and provided, as appears from the following certified articles of association: (Here copy articles of association and accompanying certificates). Now, therefore, I (here the name of the secretary shall be inserted), secretary of state, hereby certify that (here the names of the subscribers to the articles of association shall be inserted), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (here the name of the corporation shall be inserted), with such articles of association, and have all the powers, rights, and privileges and subject to the duties, liabilities, and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the State of North Carolina hereunto affixed, this the.....day of....., in the year.....(in these blanks the day, month, and year of execution of this certificate shall be inserted; and in the case of purely mutual companies, so much as relates to capital stock shall be omitted).

The secretary of state shall sign the certificate and cause the seal of the state to be affixed to it, and such certificate of incorporation and certificate of the secretary of state has the effect of a special charter and is conclusive evidence of the organization and establishment of the corporation. The secretary of state shall also cause a record of his certificate to be made, and a certified copy of this record may be given in evidence with the same effect as the original certificate.

C. S., s. 6328; Rev., s. 4727; 1899, c. 54, s. 25; 1903, c. 438, ss. 2, 3.

723. First meeting; organization; license. The first meeting for the purpose of organization under such charter shall be called by a notice signed by one or more of the subscribers to the certificate of incorporation, stating the time, place, and purpose of the meeting; and at least seven days before the appointed time a copy of this notice shall be given to each subscriber, left at his usual place of business or residence, or duly mailed to his post-office address, unless the signers waive notice in writing. Whoever gives the notice must make affidavit thereof, which affidavit shall include a copy of the notice and be entered upon the records of the corporation. At the first meeting, or any adjournment

thereof, an organization shall be effected by the choice of a temporary clerk, who shall be sworn; by the adoption of by-laws; and by the election of directors and such other officers as the by-laws require; but at this meeting no person may be elected director who has not signed the certificate of incorporation. The temporary clerk shall record the proceedings until the election and qualification of the secretary. The directors so chosen shall elect a president, secretary, and other officers which under the by-laws they are so authorized to choose. The president, secretary, and a majority of the directors shall forthwith make, sign, and swear to a certificate setting forth a copy of the certificate of incorporation, with the names of the subscribers thereto, the date of the first meeting and of any adjournments thereof, and shall submit such certificate and the records of the corporation to the insurance commissioner, who shall examine the same, and who may require such other evidence as he deems necessary. If upon his examination the insurance commissioner approves of the by-laws and finds that the requirements of the law have been complied with, he shall issue a license to the company to do business in the state, as is provided for in this chapter.

C. S., s. 6329; Rev., s. 4728; 1899, c. 54, s. 25; 1903, c. 438, ss. 2, 3.

724. By-laws; classification and election of directors. A domestic company may adopt by-laws for the conduct of its business not repugnant to law or its charter, and therein provide for the division of its board of directors into two, three, or four classes, and the election thereof at its annual meetings so that the members of one class only shall retire and their successors be chosen each year. Vacancies in any such class may be filled by election by the board for the unexpired term.

C. S., s. 6330; Rev., s. 4724; 1899; c. 54, s. 22.

725. Power to purchase, hold, and convey real estate. Any company organized by special charter or under the provisions of the general insurance laws of this state may purchase, hold, and convey real estate for the sole purposes and in the manner herein set forth:

1. Such as is necessary for its immediate use in the transaction of its business.
2. Property mortgaged to it in good faith as security for loans previously contracted or for money due.
3. Property conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts.

4. It is unlawful for any such incorporated company to purchase or hold real estate in any other case or for any other purpose; and such real estate acquired, and not necessary for the accommodation of the company in the convenient transaction of its business, shall be sold and disposed of within five years after the company has acquired title, and it is not lawful for it to hold the real estate for a longer period than that mentioned, unless it acquired such real estate prior to March sixth, one thousand eight hundred and ninety-nine, or procures a certificate from the insurance commissioner that the interest of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such a time as the insurance commissioner directs in the certificate. Nothing contained herein prevents any insurance company from improving and conveying its real estate, notwithstanding the lapse of five years from its acquisition thereof, without having procured such certificate from the insurance commissioner.

C. S., s. 6331; Rev., s. 4725; 1899, c. 54, s. 22; 1903, c. 536, s. 2.

726. Amount of capital required. The amount of capital requisite to the formation and organization of companies under the provisions of this subchapter is as follows: Companies to insure plate-glass, not less than ten thousand dollars. Companies issuing health policies, policies against damage by hail, or insuring marine risks or inland risks upon the stock plan, or insuring livestock, not less than twenty-five thousand dollars. Companies for the purpose of transacting life or fire insurance on the stock plan, fidelity insurance, accident insurance, steam-boiler insurance, credit insurance, sprinkler insurance, and insurance against loss by accident to vehicles, not less than fifty thousand dollars; but life or accident companies on the industrial plan, issuing policies not over five hundred dollars, may be allowed to transact business with as little capital as twenty-five thousand dollars. Companies may be so formed to insure mechanics' tools and apparatus against loss by fire for an amount not exceeding two hundred and fifty dollars in a single risk, with a capital of not less than ten thousand dollars, divided into shares of the par value of ten dollars each.

C. S., s. 6332; Rev., s. 4729; 1899, c. 54, s. 26; 1903, c. 438, s. 4; 1907, c. 1000, s. 5; 1913, c. 140, s. 2.

727. Capital stock fully paid in cash. The capital stock shall be paid in cash within twelve months from the date of the charter or certificate of organization, and no certificate of full shares and no policies may be issued until the whole capital is paid in. **A**

majority of the directors shall certify on oath that the money has been paid by the stockholders for their respective shares and is held as the capital of the company invested or to be invested as required by the next succeeding section.

C. S., s. 6333; Rev., s. 4730; 1899, c. 54, s. 27.

728. Investment of capital. Such capital shall be invested only as follows:

1. In first mortgage of real estate in this state.
2. In bonds of the United States or of any of the states whose bonds do not sell for less than par.
3. In the bonds or notes of any city, county, or town of this state whose net indebtedness does not exceed five per centum of the last preceding valuation of the property therein for purposes of taxation. The term "net indebtedness" excludes any debt created to provide an electric light plant and equipment, sewerage system, and a supply of water for general domestic use, and allows credit for the sinking fund of a county, city, town, or district available for the payment of its indebtedness.
4. Any insurance company having a capital stock of more than one hundred thousand dollars may, with the consent of the insurance commissioner, after investing one hundred thousand dollars of the capital as provided in this section, invest the balance in such other securities or in such safe manner as may be approved by the commissioner.
5. Any real-estate title insurance company organized for any of the purposes set forth in article fourteen of this chapter, and having a capital stock of more than fifty thousand dollars, may, with the consent of the insurance commissioner, after investing fifty thousand dollars of the capital, as provided in this section, invest the balance thereof in abstracts of titles of property situated in one or more of the cities or counties of this state. The amount of capital so invested shall in no event exceed one-fourth of the total capital stock of such company; and no such company shall guarantee or insure in any one risk more than forty per cent of its combined capital and surplus. If the capital stock of such company does not exceed fifty thousand dollars, it may, with the consent of the insurance commissioner, after having invested three-fourths of its capital stock as now provided by law, invest the balance thereof in abstracts of titles of property situated in one or more of the cities or counties of this state.

C. S., s. 6334; Rev., s. 4731; 1899, c. 54, s. 27; 1907, c. 798; 1907, c. 998; 1911, c. 32; 1913, c. 200. Ex. 1920, c. 54.

729. Authority to increase or reduce capital stock. The insurance commissioner shall, upon application, examine the proceedings of domestic companies to increase or reduce their capital stock, and when found conformable to law shall issue certificates of authority to such companies to transact business upon such increased or reduced capital. He shall not allow stockholders' obligations of any description as part of the assets or capital of any stock insurance company unless the same are secured by competent collateral.

C. S., s. 6335; Rev., s. 4732; 1899, c. 54, s. 15.

730. Assessment of shares; revocation of license. When the net assets of a company organized under this article do not amount to more than three-fourths of its original capital, it may make good its capital to the original amount by assessment of its stock. Shares on which such an assessment is not paid within sixty days after demand shall be forfeitable and may be canceled by vote of the directors and new shares issued to make up the deficiency. If such company does not, within three months after notice from the insurance commissioner to that effect, make good its capital or reduce the same, as allowed by this article, its authority to transact new business of insurance shall be revoked by the commissioner.

C. S., s. 6336; Rv., s. 4733; 1899, c. 54, s. 28; 1903, c. 438, s. 4.

731. Increase of capital stock. Any company organized under this article may issue pro rata to its stockholders certificates of any portion of its actual net surplus it deems fit to divide, which shall be considered an increase of its capital to the amount of such certificates. The company may, at a meeting called for the purpose, vote to increase the amount and number of shares of its capital stock, and to issue certificates therefor when paid in full. In whichever method the increase is made, the company shall, within thirty days after the issue of such certificates, submit to the insurance commissioner a certificate setting forth the amount of the increase and the facts of the transaction, signed and sworn to by its president and secretary and a majority of its directors. If the insurance commissioner finds that the facts conform to the law, he shall endorse his approval thereof; and upon filing such certificate so endorsed with the secretary of state, and the payment of a fee of five dollars for filing the same, the company may

transact business upon the capital as increased, and the insurance commissioner shall issue his certificate to that effect.

C. S., s. 6337; Rev., s. 4734; 1899, c. 54, s. 29.

732. Reduction of capital stock. When the capital stock of a company organized under this article is impaired, the company may, upon a vote of the majority of the stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof to an amount not less than the minimum sum required by law, but no part of its assets and property shall be distributed to its stockholders. Within ten days after such meeting the company must submit to the insurance commissioner a certificate setting forth the proceedings thereof and the amount of the reduction and the assets and liabilities of the company, signed and sworn to by its president, secretary, and a majority of its directors. The insurance commissioner shall examine the facts in the case, and if they conform to law, and in his judgment the proposed reduction may be made without prejudice to the public, he shall endorse his approval upon the certificate. Upon filing the certificate so endorsed with the secretary of state and paying a filing fee of five dollars, the company may transact business upon the basis of the reduced capital as though it were original capital, and its charter shall be deemed to be amended to conform thereto, and the insurance commissioner shall issue his certificate to that effect. The company may, by a majority vote of its directors, after the reduction, require the return of the original certificates of stock held by each stockholder in exchange for new certificates it may issue in lieu thereof for such number of shares as each stockholder is entitled to in the proportion that the reduced capital bears to the original capital.

C. S., s. 6338; Rev., s. 4735; 1899, c. 54, s. 30.

733. Dividends declared; liability of stockholders for unlawful dividends. No stock company organized under this article may pay a cash or stock dividend except from its actual net surplus computed as required by law in its annual statements, nor may any such company which has ceased to do new business of insurance divide any portion of its assets, except surplus, to its stockholders, until it has performed or canceled its policy obligations. No dividend shall be paid by any company incorporated in this state when its capital stock is impaired, or when such payment

would have the effect of impairing its capital stock; and any dividend so paid subjects the stockholders receiving it to a joint and several liability to the creditors of said company to the extent of the dividend so paid.

C. S., s. 6339; Rev., s. 4736; 1899, c. 54, s. 31; 1903, c. 536, s. 3.

734. Loans insufficiently secured. Whenever it appears by examination, as authorized by law, that an insurance company, organized under the laws of this state, holds, as collateral security for the payment of any loan, any stock, bond, or security of whatever description, which has not a cash market value of at least twenty-five per centum more than the amount of such loan, the insurance commissioner may require the reduction of the loan or an increase of the collateral security, so that the security shall be at least twenty-five per centum in excess of the amount loaned. If the company fail to comply with this requirement within ten days after receiving written notice thereof from the commissioner, it is the duty of the commissioner to disallow the loan and to deduct the amount thereof from the assets of the company. If it appears, upon examination, that any such insurance company holds, as security for any loan, a mortgage upon real estate which is not a first lien, or that the value of the real estate is less than fifty per centum in excess of the loan which it is mortgaged to secure, the insurance commissioner may disallow the loan and deduct the amount thereof from the assets of the company holding it, after having given the company at least twenty days notice, in writing, to change or conform the loan to the requirements of this section.

C. S., s. 6340; Rev., s. 4737; 1903, c. 536, ss. 6, 7, 8.

ART. 7. GUARANTY FUND FOR DOMESTIC COMPANIES.

735. Guaranty fund established. Any insurance company formed as provided in the preceding article, or now existing by virtue of any of the laws of North Carolina, may establish a guaranty fund of not less than twenty-five thousand dollars nor more than two hundred thousand dollars, in the following manner: The company may receive from any person, firm, or corporation, money, bonds, or other securities, in such amount as may be agreed upon, for the purpose of providing a guaranty fund, to be used as hereinafter provided, for the payment of the claims of policyholders. Upon the receipt of such bonds, money, or other securities by any insurance company, it shall issue its certificate in writing, au-

thenticated as required by law for certificates of stock, stating the amount, terms, and conditions of repayment of such money or the return of such bonds or other securities, the name of the payee or depositor, and the certificate shall also state upon its face that it is issued under the provisions of this section. The money, bonds, or other securities, when so paid to or deposited with such insurance company, becomes a part of the guaranty fund of the company, and are liable for all the claims of policyholders after the general assets of the company have been exhausted. This guaranty fund is not liable for the claims or debts due to stockholders or the general creditors of such insurance company. No insurance company shall create a guaranty fund, as provided in this article, except upon the approval of a majority of its stockholders authorized at any regular or special meeting called for the purpose.

C S., s. 6341; 1909, c. 922, s. 1.

736. Separate accounts; application of fund. Every insurance company which establishes a guaranty fund under the provisions of this article must keep a separate account of the same on its books, together with a full and true list of any securities held therefor. The money and securities belonging to the guaranty fund must be invested in the same manner as is now provided by law for the investment of the other assets of insurance companies; but any bond or other securities received by any such insurance company as a part of its guaranty fund may be deposited with the insurance commissioner, as is now allowed by law, subject to the further provisions of this article. An insurance company receiving said money or securities as a part of its guaranty fund, as herein provided, may pay to the person, firm, or corporation from whom the same is received a semiannual dividend of not more than three and one-half per cent on the amount of said money or securities. The guaranty fund herein provided for shall be applied to the payment of claims of policyholders only when the insurance company has exhausted its cash on hand and the invested assets, exclusive of uncollected premiums; and when the guarantee is in any way impaired the directors may make good the whole or any part of such impairment by assessments upon the contingent funds of the company at the date of such impairment, if any are available.

C. S., s. 6342; 1909, c. 922, s. 1.

787. Reduction or retirement of fund. The guarantee fund shall be retired when the permanent fund of the company equals

two per centum of the amount insured upon all policies in force; and such guarantee fund may be reduced or retired by vote of the directors of the company and the assent of the insurance commissioner, if the net assets of the company above the reinsurance reserve and all other claims and obligations, exclusive of the guaranty fund, for two years immediately preceding and including the date of its last annual statement, are not less than twenty-five per centum of the fund. Due notice of this proposed action on the part of the directors of the company must be mailed to each director of the company not less than thirty days before the meeting when such action may be taken, and must also be advertised in two newspapers of general circulation, to be approved by the insurance commissioner, not less than twice a week for a period of not less than four weeks before the meeting. No insurance company with a guaranty fund, as hereinbefore provided, which has ceased to do new business, may return or retire any part of the guaranty fund or divide to its stockholders any part of its general assets, except incomes from its investments, until it shall have performed, reinsured, or canceled its policy obligations.

C. S., s. 6343; 1909, c. 922, s. 1.

738. Insolvency; return of fund. In the event of insolvency or voluntary liquidation of any such insurance company, the amount of the guaranty fund shall be returned to the persons, firms, or corporations, their heirs, executors, administrators, successors, or assigns, from which the same was received, in full or pro rata, as the case may be, before any amount shall be paid from the assets of said company to its stockholders. The intention of this section is that the liability of the company for the repayment or the return of its guaranty fund, as evidenced by its certificates therefor, as hereinbefore provided, shall be preferred in the distribution of its assets to the stockholders and general creditors of the company, other than its policy obligations.

C. S., s. 6344; 1909, c. 922, s. 1.

739. Conversion to guaranty fund. Any insurance company now doing business as a domestic insurance company under the laws of this state which has received any money or securities to be held as a guaranty capital, guaranty surplus, or guaranty fund, may convert the same into a guaranty fund, as hereinbefore provided, by mutual agreement between the board of directors

of the insurance company and the parties from whom the money or securities have been received, subject, however, to the approval of the insurance commissioner, and thereupon certificates shall be issued therefor, as hereinbefore provided, and the same shall thereafter be held subject to the rights and liabilities provided in this article.

C. S., s. 6345; 1909, c. 922, s. 2.

ART. 8. MUTUAL INSURANCE COMPANIES.

740. Mutual fire insurance companies organized; requisites for doing business. Mutual fire insurance companies may be formed under this article, but no policy may be issued by a purely mutual fire insurance company, or by a mutual fire insurance company with a guaranty capital of less than fifty thousand dollars, until not less than two hundred thousand dollars of insurance, in not less than two hundred separate risks upon property located in North Carolina, has been subscribed for and entered on its books; but in the formation of mutual fire insurance companies to operate in no more than two counties of this state, whether town or farmers' mutuals, the requirement as to amount of insurance shall be twenty-five thousand dollars in risks owned by at least twenty-five adult residents of such towns or counties; but where there is an association or corporation for the purpose of interinsurance or mutual protection between members of said association or corporation, which members or stockholders are engaged in the same line of business, the requirement shall be fifty instead of two hundred separate risks. No policy may be issued under this section until the president and the secretary of the company have certified under oath that every subscription for insurance in the list presented to the insurance commissioner for approval is genuine, and made with an agreement with every subscriber for insurance that he will take the policies subscribed for by him within thirty days after the granting of a license to the company by the insurance commissioner to issue policies.

C. S., s. 6346; Rev., s. 4738; 1899, c. 54, ss. 25, 32, 34; 1901, c. 391, s. 3; 1903, c. 438, s. 4; 1911, c. 93.

741. Assessments kept in treasury; certain officers debarred from commissions. Every mutual or assessment company or association organized or doing business in the state on the assessment plan shall keep in its treasury at least one assessment sufficient to pay one average loss. No officer or other person whose

duty it is to determine the character of the risk, and upon whose decision the application shall be accepted or rejected by a mutual fire insurance company, shall receive as any part of his compensation a commission upon the premiums, but his compensation shall be a fixed salary and such share in the net profits as the directors may determine. Nor shall such officer or person be an employee of any officer or agent of the company.

C. S., s. 6347; Rev., s. 4738; 1899, c. 54, s. 32; 1903, c. 438, s. 4.

742. Policyholders are members of mutual fire companies. Every person insured by a mutual fire insurance company is a member while his policy is in force, entitled to one vote for each policy he holds, and must be notified of the time and place of holding its meetings by a written notice or by an imprint upon the back of each policy, receipt, or certificate of renewal, as follows:

The insured is hereby notified that by virtue of this policy he is a member of the-----insurance company, and that the annual meetings of the company are held at its home office on the-----day of-----, in each year, at-----o'clock.

The blanks shall be duly filled in print and are a sufficient notice. A corporation which becomes a member of such company may authorize any person to represent it, and this representative has all the rights of an individual member. A person holding property in trust may insure it in such company, and as trustee assume the liability and be entitled to the rights of a member, but is not personally liable upon the contract of insurance. Members may vote by proxies, dated and executed within three months, and returned and recorded on the books of the company three days or more before the meeting at which they are to be used; but no person as proxy or otherwise may cast more than twenty votes.

C. S., s. 6348; Rev., s. 4739; 1899, c. 54, s. 33.

743. Directors in mutual fire companies. Every mutual fire insurance company shall elect by ballot a board of not less than seven directors, who shall manage and conduct its business and hold office for one year or for such term as the by-laws provide and until their successors are qualified. Two-thirds at least of the directors must be citizens of the state, and after the first election members only are eligible, but no director is disqualified

from serving the term he was chosen for by reason of the expiration or cancellation of his policy. In companies with a guaranty capital, one-half of the directors shall be chosen by and from the stockholders.

C. S., s. 6349; Rev., s. 4739; 1899, c. 54, s. 33.

744. Mutual fire companies with a guaranty capital. A mutual fire insurance company formed as provided in this article, or a mutual fire insurance company now existing, may establish a guaranty capital or surplus of not less than twenty-five thousand dollars nor more than two hundred thousand dollars, divided into shares of one hundred dollars each, which shall be invested in the same manner as is provided in this subchapter for the investment of the capital stock of certain insurance companies. The stockholders of the guaranty capital of a company or owners of guaranty surplus are entitled to a semiannual dividend of not more than three and one-half per centum on their respective shares if the net profits or unused premiums left after all expenses, losses, and liabilities then incurred, together with the reserve for reinsurance, as provided for, are sufficient to pay the same. The guaranty capital or surplus shall be applied to the payment of losses only when the company has exhausted its cash in hand and the invested assets, exclusive of uncollected premiums, and when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the company at the date of such impairment. Shareholders and members of such companies are subject to the same provisions of law in respect to their right to vote as apply respectively to shareholders in stock companies and policyholders in purely mutual companies. This guaranty capital or surplus shall be retired when the permanent fund of the company equals two per centum of the amount insured upon all policies in force, and may be reduced or retired by vote of the policyholders of the company and the assent of the insurance commissioner, if the net assets of the company above its reinsurance reserve and all other claims and obligations, exclusive of guaranty capital or surplus, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five per centum of the guaranty capital or surplus. Due notice of such proposed action on the part of the company must be mailed to each policyholder of the company not less than thirty days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the insurance com-

missioner, not less than three times a week for a period of not less than four weeks before such meeting. No insurance company with a guaranty capital or surplus, which has ceased to do new business, shall divide to its stockholders any part of its assets or guaranty capital or surplus, except income from investments, until it has performed or canceled its policy obligations.

C. S., s. 6350; Rev., s. 4740; 1899, c. 54, s. 34; 1911, c. 196, s. 3.

745. Dividends and assessments; liability of policyholders.

The directors of a mutual fire insurance company may from time to time by vote fix and determine the amount to be paid as a dividend upon policies expiring during each year. Each policyholder is liable to pay his proportional share of any assessments which are made by the company in accordance with law and his contract on account of losses incurred while he was a member, if he is notified of such assessments within one year after the expiration of his policy. Any mutual fire insurance company doing business with a fixed annual premium may in its by-laws and policies fix the contingent liability of its members for the payment of losses and expenses not provided for by its cash funds; but this contingent liability of a member must not be less than a sum equal to five times the cash premiums written in his policy and in addition thereto. The total amount of the liability of the policyholder must be plainly and legibly stated upon the back of each policy. Whenever any reduction is made in the contingent liability of members, it applies proportionately to all policies in force.

C. S., s. 6351; Rev., s. 4741; 1899, c. 54, s. 35.

746. Mutual and assessment companies and their liability.

When any policy of insurance is issued by any mutual insurance company or association organized under the laws of this state and such policy is assigned or pledged as collateral security for the payment of a debt, such company or association, by its president and secretary or other managing officers, may insert in such policy so assigned or pledged, or attach thereto, as a rider thereon, a provision or provisions to be approved by the insurance commissioner, whereby any or all conditions of the policy which work a suspension or forfeiture and especially the provisions of the statute which limits such corporation to insure only property of its members, may be waived in such cases for the benefit of the assignee or mortgagee. In case any such company or association shall consent to such assignment of any policy or policies, or the proceeds thereof, it may nevertheless

at any time thereafter, by its president and secretary or such other officer as may be authorized by the board of directors, cancel such policy by giving the assignee or mortgagee not less than ten days notice in writing: Provided however, a longer period may be agreed upon by the company or association and such assignee or mortgagee. And the president and secretary of such company or association, with the approval of the insurance commissioner, may agree with the assignee or mortgagee upon an assessment or premium to be paid to the insurer in case the insured shall not pay the same, which shall not be less than such a rate or sum of money as may be produced by the average assessments or premiums made or charged by like company or association during a period of five years next preceding the year of such agreement and assignment. When an assignment is made as herein provided the policy or policies so assigned or pledged, subject to the conditions herein, shall remain in full force and effect for the benefit of the assignee or mortgagee, notwithstanding the title or ownership of the assured to the property insured, or to any interest therein, shall be in any manner changed, transferred or encumbered.

C. S., s. 6351-a; 1920, c. 79.

747. Guaranty against assessments prohibited. If any director or other officer of a mutual fire insurance company, either officially or privately, shall give a guarantee to a policyholder thereof against an assessment to which such policyholder would otherwise be liable, he shall be punished by a fine not exceeding one hundred dollars for each offense.

C. S., s. 6352; Rev., s. 3496; 1899, c. 54, s. 100.

748. Manner of making assessments; rights and liabilities of policyholders. When a mutual fire insurance company is not possessed of cash funds above its reinsurance reserve sufficient for the payment of insured losses and expenses, it must make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to their several liabilities. The company shall cause to be recorded in a book kept for that purpose the order for the assessment, together with a statement which must set forth the condition of the company at the date of the order, the amount of its cash assets and deposits, notes, or other contingent funds liable to the assessment, the amount the assessment calls for, and the particular losses or liabilities it is made to provide for. This record must be made and signed by the directors who voted

for the order before any part of the assessment is collected, and any person liable to the assessment may inspect and take a copy of the same. When, by reason of depreciation or loss of its funds or otherwise, the cash assets of such company, after providing for its other debts, are less than the required premium reserve upon its policies, it must make good the deficiency by assessment in the manner above provided. If the directors are of the opinion that the company is liable to become insolvent they may, instead of such assessment, make two assessments, the first determining what each policyholder must equitably pay or receive in case of withdrawal from the company and having his policy canceled; the second, what further sum each must pay in order to reinsure the unexpired term of his policy at the same rate as the whole was insured at first. Each policyholder must pay or receive according to the first assessment, and his policy shall be canceled unless he pays the sum further determined by the second assessment, in which case his policy continues in force; but in neither case may a policyholder receive or have credited to him more than he would have received on having his policy canceled by a vote of the directors under the by-laws.

C. S., s. 6353; Rev., s. 4742; 1899, c. 54, ss. 36, 37.

- **Mandamus § 136.** Where, after judgment against a mutual fire insurance company in an action on a policy, it refuses to make an assessment on its members necessary in order to raise funds with which to pay the judgment, the policyholder may have mandamus to compel such assessment.—*Perry v. Farmers' Mut. Fire Ins. Co.*, 132 N. C. 283, 43 S. E. 837.

Insurance § 191. Where the members of mutual insurance companies have enjoyed the protection which membership affords, they cannot, after a loss has been sustained, withdraw and refuse to pay their portion of the loss.—*Perry v. Farmers' Mutual Fire Ins. Co.*, 139 N. C. 374, 51 S. E. 1025.

Insurance § 125. All contracts and by-laws of an incorporated society are made with reference to the general law, and they must conform to certain general requirements in respect to vested personal and property rights of members.—*Sherrod v. Farmers' Mutual Fire Ins. Co.*, 139 N. C. 167, 51 S. E. 910.

749. Mutual life and health companies. Life and health insurance companies and associations organized in this state to do business on the mutual plan shall be governed as to the commencement of business, election of members, guaranty capital, dividends, and assessments as provided in this article for mutual fire insurance companies, where applicable.

C. S., s. 6354; Rev., s. 4743; 1903, c. 536, s. 1.

750. Dividends on, and redemption of, guaranty capital of life companies. The stockholders of the guaranty capital of any

domestic life insurance company are entitled to such annual dividends not exceeding eight per centum, payable from the net surplus, as have been agreed upon in the subscription thereof. Such company may redeem its guaranty capital by appropriation of net surplus for that purpose whenever its members so vote.

C. S., s. 6355; Rev., s. 4744; 1899, c. 54, s. 58; 1903, c. 438, s. 5.

ART. 9. ASSESSMENT COMPANIES.

751. Copies of charter and by-laws filed. Every corporation, society, or organization of this or any other state or country, transacting business under this department upon the co-operative or assessment plan, must file with the insurance commissioner, before beginning to do business in this state, a copy of its charter or articles of association, and the by-laws, rules, or regulations referred to in its policies or certificates and made a part of such contract. By-laws or regulations not so filed with the insurance commissioner will not avoid or affect any policy or certificate issued by such company or association.

C. S., s. 6356; Rev., s. 4790; 1899, c. 54, s. 86.

See *Brenizer v. Royal Arcanum*, 141 N. C. 409, 53 S. E. 835.

752. Contracts must accord with charter and by-laws. Every policy or certificate or renewal receipt issued to a resident of this state by any corporation, association, or order transacting therein the business of insurance upon the assessment plan must be in accord with the provisions of the charter and by-laws of such corporation, association, or order, as filed with the insurance commissioner. It is unlawful for any such domestic or foreign insurance company or fraternal order to transact or offer to transact any business not authorized by the provisions of its charter and the terms of its by-laws, or, through an agent or otherwise, to offer or issue any policy, renewal certificate, or other contract whose terms are not in clear accord with the powers, terms, and stipulations of its charter and by-laws.

C. S., s. 6357; Rev., s. 4791; 1899, c. 54, s. 84; 1903, c. 438, s. 9.

Insurance § 719. Since no law prohibits fraternal benefit society from raising its rates, but above section makes such contracts subject to the charter and by-laws of the company, a Massachusetts company, whose charter and by-laws permit, may raise the rate of a North Carolina member.—*Hollingsworth v. Supreme Council of the Royal Arcanum*, 175 N. C. 615, 96 S. E. 81.

753. "Assessment plan" printed on application and policy. Every policy or certificate issued to a resident of the state by

any corporation transacting in the state the business of life insurance upon the assessment plan, or admitted to do business in this state on the assessment plan, shall print in bold type and in red ink, near the top of the front page of the policy, upon every policy or certificate issued upon the life of any such resident of the state, the words "issued upon the assessment plan"; and the words "assessment plan" shall be printed conspicuously in red ink in and upon every application, circular, card, and any and all printed documents issued, circulated, or caused to be circulated by such corporation within the state, save and except, however, in advertising in newspapers within the state, in which case the words may be printed in black.

C. S., s. 6358; 1913, c. 159, s. 1.

754. Revocation for non-compliance. If any corporation or association transacting insurance business in this state on the assessment plan or issuing any policy upon the life of a resident of North Carolina upon the assessment plan shall fail or refuse to comply with the foregoing section, the insurance commissioner shall forthwith suspend or revoke all authority of such corporation or association and of its agents to do business in this state.

C. S., s. 6359; 1913, c. 159, s. 2.

755. Deposits and advance assessments required. Every domestic insurance company, association, order, or fraternal benefit society doing business on the assessment plan shall collect and keep at all times in its treasury one regular loss assessment sufficient to pay one regular average loss; and no such company, association, order, or fraternal benefit society shall be licensed by the insurance commissioner unless it makes and maintains with him for the protection of its obligations at least five thousand dollars in United States or North Carolina bonds, in farm loan bonds issued by federal loan banks, or in the bonds of some city, county, or town of North Carolina to be approved by the insurance commissioner, or deposit with him a good and sufficient bond, secured by a deed of trust or real estate situate in North Carolina and approved by him; but this shall not apply to companies, associations, or orders doing business in not more than two adjacent counties. Such companies, associations, orders, or societies now doing business in this state and not issuing policies or certificates for more than two hundred dollars, shall be permitted to deposit five hundred dollars on the first day of July,

one thousand nine hundred and thirteen, and five hundred dollars each six months thereafter until the required amount is deposited; and the last named association when hereafter organized may be allowed by the insurance commissioner to make such deposit in like installments. The insurance commissioner may increase the amount of deposit to the amount of reserve on the contracts of the association or society.

C. S., s. 6360; Rev., s. 4799; 1913, c. 119, s. 1; 1917, c. 191, s. 2.

756. Deposits by foreign assessment companies or order. Each foreign insurance company, association, order, or fraternal benefit society doing business in this state on the assessment plan shall keep at all times deposited with the insurance commissioner or in its head office in this state, or in some responsible banking or trust company, one regular assessment sufficient to pay the average loss or losses occurring among its members in this state during the time allowed by it for the collection of assessments and payment of losses. It shall notify the insurance commissioner of the place of deposit and furnish him at all times such information as he requires in regard thereto; and no such company, association, order, or fraternal benefit society shall be licensed by the commissioner unless it makes and maintains with him for the protection of its obligations at least five thousand dollars in United States or North Carolina bonds, in farm loan bonds issued by Federal land banks, or in the bonds of some county, city, or town in North Carolina to be approved by the insurance commissioner, or a good and sufficient bond or note, secured by deed of trust on real estate situate in North Carolina, and approved by the commissioner. The provisions of this section do not apply to associations, orders, or fraternal benefit societies operating in not more than two adjacent counties in the state and paying a benefit of not exceeding two hundred dollars, but the amount to be deposited by said societies is within the discretion of the insurance commissioner, but must be not less than one hundred dollars.

C. S., s. 6361; Rev., s. 4713; 1899, c. 54, s. 84; 1903, c. 438, s. 9; 1913, c. 119, ss. 2, 3; 1917, c. 191, s. 2.

757. Revocation of license. If any such corporation, association, or order at any time fails to comply with the provisions of the two next preceding sections or shall issue policies or certificates not in accord with its charter and by-laws, as provided in this article, the insurance commissioner shall forthwith suspend

or revoke all authority to it, and of all its agents or officers, to do business in this state, and shall publish such revocation in some newspaper published in this state.

C. S., s. 6362; Rev., s. 4793; 1899, c. 54, s. 85.

ART. 10. BOND AND INVESTMENT COMPANIES

"BLUE SKY LAW."

758. License required; amount of capital stock. Before any bond, investment, dividend, guarantee, registry, title guarantee, debenture, or other like company (not strictly an insurance company as defined in this chapter), or any individual, corporation, or partnership who, by agents, offers for sale or sells the stocks, bonds, or obligations of any foreign corporation, whether organized or to be organized or being promoted, may be authorized to do business in this state, such company, individual, or partnership must be licensed by the insurance commissioner; and the commissioner is authorized to issue such license when he is satisfied that such company or corporation is safe and solvent, and has complied with the laws of this state applicable to fidelity companies and governing their admission and supervision by the insurance department. If such company is chartered and organized in this state and has its home office within the state, and is solvent to the extent of at least fifteen thousand dollars, it may, if a stock company, commence business with a capital stock of twenty-five thousand dollars. The license issued to such companies and their agents shall be issued and paid for as provided for those of insurance companies. This section shall apply also to every corporation, company, co-partnership, or association organized or to be organized in this state where such company or organization by its organizers or promoters puts or proposes to put the stock of the company on the market in person or by agents.

C. S., s. 6363; Rev., s. 4805; 1899, c. 54, s. 87; 1901, c. 706, s. 2; 1911, c. 196, s. 4; 1919, c. 121.

Commerce § 69. It is within the police power of the state to require a license from foreign corporations which seek to do business within the state by selling therein their obligations, evidences of property and acreage in another state, the transaction being entirely consummated within one state and not being interstate commerce.—State v. Agey, 171 N. C. 831, 88 S. E. 726.

Corporations § 636. There is nothing in either the federal or state constitution which prohibits the state, in the exercise of its police power, in order to prevent fraud and imposition, from requiring a license from foreign corporations for doing business in the state.—Ibid.

Corporations § 648. Foreign corporations offering fig orchards for sale reserving title until final payment held required to procure license from insurance commissioner.—*Ibid.*

Principal & Surety § 153. Service of process upon insurance commissioner for foreign bonding company is not required under this section.—*Pardue v. Absher*, 174 N. C. 676, 94 S. E. 414.

759. Foreign companies subject to regulation of this article. Every corporation, partnership, or association, all of which are in this article termed company, organized, proposed to be organized, or which shall hereafter be organized, without this state, whether incorporated or unincorporated, which shall in this state sell, or negotiate for sale, any stocks, bonds, or other evidences of property or interest in itself or any other company, all of which are in this article termed securities, upon which sale or proposed sale the whole or any part of the proceeds are used, or to be used, directly or indirectly, for the payment of any commission or other expenses incidental to the organization or promotion of any such company, shall be subject to this article. The provisions of this article shall apply to a private owner selling stock in a foreign corporation, but only so far as it shall be necessary for him to satisfy the insurance commissioner that such sale is made or is offered to be made in good faith and without intent to evade the provisions of this article.

C. S., s. 6364; 1913, c. 156, s. 1 (1); 1921.

760. Documents to be filed with commissioner; license issued. Before offering or attempting to sell any such securities to any person or persons, doing or offering to do any business whatever in this state, excepting that of preparing the documents hereinafter required, every such company shall file in the office of the insurance commissioner of this state, together with the fees prescribed for fidelity companies, the following documents, to wit: A statement showing in full detail the plan upon which its proposes to transact business; a copy of all applications for and forms of contracts, securities, bonds, or other instruments, which its proposes to make with or sell to its contributors; a statement which shall show the name, location, and head office of the company and an itemized account of its actual financial condition, and the amount of its property and liabilities, and such other information, and in such form, touching its affairs as said officer may require. It shall also file with the insurance commissioner a copy of the laws of such state, territory, or government under which it exists or is incorporated, and also a copy of its charter

of its home state and certificate of the proper officer of such state that it is authorized to do business therein, articles of incorporation, constitution, and by-laws, and all amendments thereof which have been made, and all other papers pertaining to its organization, and enter into an agreement as a condition precedent to being licensed that stock or other offerings shall be sold only for cash or for notes or bonds payable to the company, and that said notes or bonds will not be sold or discounted with an indorsement "without recourse" or obligation not to be responsible for the same by the owner in a general sale or canvass, or by an agent on salary or commission. Before doing business in this state it must be licensed by the insurance commissioner, which the commissioner is authorized to do when he is satisfied that such company or corporation is safe and solvent, and has complied with the laws of this state applicable to fidelity companies and governing their admission and supervision by the insurance department.

C. S., s. 6365; 1913, c. 156, s. 1 (2); 1921, c. 233.

761. Advertising matter regulated. No advertisement, pamphlet, circular, or other document shall be issued, circulated, or delivered by such company or its agent, within this state, unless the same shall bear a serial number, and a copy thereof shall first have been filed with the insurance commissioner, nor after such company has been notified of objection thereto by said officer.

C. S., s. 6366; 1913, c. 156, s. 1 (3).

762. Contract in writing; stipulations required. No person, for the purpose of organizing or promoting any company, or promoting the sale of securities of such company by it after organization, as principal or agent, shall sell or agree or attempt to sell within this state any securities in such company unless the contract of subscription or of sale shall be in writing and contain a provision in the following language:

"No sum shall be used for commission, promotion, and organization expenses on account of any share of stock in this company in excess of one per cent of the amount actually paid upon separate subscriptions (or in lieu thereof may be inserted, or one dollar per share from every fully paid subscription) for such securities, and the remainder of such securities shall be held or invested as authorized by the law governing such company and held by the organizers (or trustees as the case may be), and the directors and officers of such company after organization, as bailees for the subscriber, to be used only in the conduct of the

business of such company after having been licensed and authorized therefor by proper authority."

C. S., s. 6367; 1913, c. 156, s. 1 (4).

763. Funds deposited until license granted. Funds and securities held by such organizers, trustees, directors, or officers as bailees shall be deposited with any bank or trust company of this state until such company has been licensed to do business.

C. S., s. 6367; 1913, c. 156, s. 1 (4).

764. Name of person interested to appear in contract. No person shall participate in, receive, or accept any part or promise of any part of any of the commissions or rewards of any organizer, promoter, or agent for the sale of any such securities, unless the name of such person and the fact of his interest in such commissions or rewards shall appear upon such contract of subscription. The omission of such statement from any such contract shall, in addition to the penalty herein provided, make such person liable to the purchaser or his assignees for all sums paid by such purchasers, with interest at the legal rate from date of payment, upon the assignment or tender of assignment of the securities so purchased.

C. S., s. 6369; 1913, c. 156, s. 1 (5).

765. Examination by commissioner; license. The insurance commissioner has power to make examination of said company at its expense, including actual expenses and the per diem of examiners twenty-five dollars, and to require such further information as he may deem advisable, and if he shall find that the provisions of the law have been complied with, and is satisfied that the company is safe and solvent, and that its business is proper and legitimate and is so conducted, he may license the company to transact business in the state upon the payment of a license fee of two hundred dollars; and no such company or representative thereof shall transact or offer to transact business within this state unless a license has been issued to it to do so. The license shall recite in bold type that the insurance commissioner in no wise recommends the securities to be offered for sale by such company.

C. S., s. 6370; 1913, c. 156, s. 1 (6); Ex. Sess. 1920, c. 1, s. 7-i.

766. Changes in organization or plans filed with commissioner. No such company shall transact, or offer to transact, any business within this state during any time after the adoption of any change in its articles of organization, by-laws, or plan of doing

business, or the making of any change in the form of its applications, or other contracts, before the same shall have been filed with the insurance commissioner.

C. S., s. 6371; 1913, c. 156, s. 1 (7).

767. Agents must be licensed; bond required. No person shall transact or offer to transact business in this state as agent for such company, or transact or offer to transact any business described in this article unless such person shall hold a license issued by the insurance commissioner and no license shall issue to any person who is not a resident of the State of North Carolina, and has not been a bona fide resident for at least two years prior to the date when such application for license is filed with the insurance department. The license shall issue only upon the filing with the insurance commissioner by such agent of a bond in the sum of one thousand dollars (\$1,000), with such conditions and sureties as may be required and approved by the insurance commissioner. The license shall expire on the first day of April following, unless the authority is sooner revoked by the insurance commissioner, and such authority shall be subject to revocation at any time by such officer for cause appearing to him sufficient. The fee for such agent's license shall be the same as prescribed for fidelity companies.

C. S., s. 6372; 1913, c. 156, s. 1 (8); Ex. Sess. 1920, c. 74.

768. Statements filed; accounts kept. Every company shall, on or before the first day of March, file with the insurance commissioner a statement as of the thirty-first day of December preceding, in such form as required by him, and such other statements and information shall be filed in such form and within such time as may be required by the commissioner. The accounts of such company shall be kept in such form as required by the commissioner.

C. S., s. 6373; 1913, c. 156, s. 1 (9).

769. Revocation of license. No such company shall fail to comply with any provision of the law or any requirement of the insurance commissioner pursuant to the law, and no officer, agent, or employee of any such company shall make or cause to be made any false statement in any report required of him, or a false entry in any book of such company, or shall make or publish any false statement of its condition or regarding its securities; and upon any violation of this section the insurance commissioner may revoke its license to do business in this state.

C. S., s. 6374; 1913, c. 156, s. 1 (10).

770. Punishment for violation. Any officer or agent of such company knowingly or wilfully violating any of the provisions of this article shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in jail or worked on the roads for not exceeding two years, or by both such fine and imprisonment.

C. S., s. 6375; 1913, c. 156, s. 1 (11).

ART. 11. FIDELITY INSURANCE COMPANIES.

771. May act as fiduciaries. Any corporation licensed by the insurance commissioner, where such powers or privileges are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or administrator in this state without giving any bond; and the clerks of the superior courts or other officers charged with the duty, or clothed with the power of making such appointments, are authorized to appoint such corporation to any such office, whether the corporation is a resident of this state or not.

C. S., s. 6376; Rev., s. 4799; 1899, c. 54, s. 47; 1903, c. 438, s. 5.

772. License to do business. Before any such corporation is authorized to execute any bond, obligation, or undertaking, or act in any fiduciary capacity without bond, it must be licensed by the insurance commissioner of the state, which the commissioner is authorized to do when satisfied that such company or corporation is safe and solvent and has complied with the laws of this state applicable to such companies, and if a foreign company, that it has also complied with the conditions, rules, and regulations governing the admission of foreign insurance companies to do business in this state.

C. S., s. 6377; Rev., s. 4800; 1899, c. 54, s. 46; 1901, c. 706, s. 1.

773. Examination as to solvency. The commissioner shall examine into the solvency of such corporation, and shall, if he deem it necessary, at the expense of the corporation, make or cause to be made an examination at its home office of its assets and liabilities.

C. S., s. 6378; Rev., s. 4801; 1899, c. 54, s. 46; 1901, c. 706.

774. Certificate of solvency equivalent to justification. After any such corporation has been licensed by the commissioner, the certificate of the commissioner that it has been admitted to do business in the state and is licensed by the insurance commis-

sioner and is solvent to an amount not less than one hundred thousand dollars, shall be, until revoked by him, equivalent to the justification of sureties, and full evidence of its authority to give such bonds or undertakings. There shall be no charge for the seal of this certificate.

C. S., s. 6379; Rev., s. 4802; 1899, c. 54, s. 46; 1901, c. 706.

775. Clerk of superior court notified of license and revocation. The insurance commissioner, upon granting license to any such corporation, shall immediately notify the clerk of the superior court of each county in the state that such corporation has been licensed under this chapter; and whenever the commissioner is satisfied that any corporation licensed by him has become insolvent, or is in imminent danger of insolvency, he shall revoke the license granted to it, and notify the clerk of the superior court of each county of such revocation; and after such notification the right of such corporation to hold any office, or be surety on any bond, as permitted by this chapter, ceases.

C. S., s. 6380; Rev., s. 4803; 1899, c. 54, s. 50.

776. Resident agents required. All business done in this state by any fidelity insurance company must be done through regularly authorized agents residing in this state, or through applications of such agents; and all policies so issued must be countersigned by such agents.

C. S., s. 6381; Rev., s. 4804; 1899, c. 54, s. 108; 1903, c. 438, s. 11.

777. Limitation of liability assumed. No fidelity or surety company shall incur in behalf or on account of any one person, partnership, association, or corporation a liability for an amount larger than one-tenth of its assets, unless it shall be secured from loss thereon beyond that amount by suitable and sufficient collateral agreements of indemnity, by deposit with it in pledge or conveyance to it in trust, for its protection, of property equal in value to the excess of its liability over such limit; or, if such liability is incurred in behalf or on account of a fiduciary holding property in a trust capacity, by such deposit or other disposition of a suitable and sufficient portion of the estate so held that no further sale, mortgage, pledge, or other disposition can be made thereof without such company's approval, except by the decree of a court having proper jurisdiction. If any company violates the provisions of this section, the insurance commissioner may revoke its authority to do business in the state.

C. S., s. 6382; 1911, c. 28.

ART. 12. PROMOTING AND HOLDING COMPANIES.

778. Terms defined. As the terms are used in this article, "promoting corporation" means a corporation or joint-stock association, engaged in the business of organizing or promoting or endeavoring to organize or promote the organization of an insurance corporation or corporations, or in any way assisting therein; "holding corporation" means a corporation or joint-stock association, which holds or is engaged in the acquisition of the capital stock or a major portion thereof of one or more insurance corporations for the purpose of controlling the management thereof, as voting trustee or otherwise; and "securities" means the shares of capital stock, subscription, certificates, debenture bonds, and any and all other contracts or evidences of ownership of or interest in insurance corporations, or in promoting or holding corporations.

C. S., s. 6383; 1913, c. 182. s. 1.

779. Certificate required. No individual, partnership, association, or corporation, as the agent of another or as a broker, shall sell or offer for sale, or in any way assist in the sale in this state of the securities of any promoting or holding corporation, or of any insurance corporation, which is not at that time lawfully engaged or authorized to engage in the transaction of the business of insurance in this state, without first procuring, as hereinafter provided, a certificate of authority from the insurance department to sell such securities; nor shall any individual, partnership, association, or corporation sell or offer for sale in this state the securities of any promoting or holding corporation, or of any insurance corporation which is not at the time of such sale or offer of sale lawfully engaged or authorized to engage in the transaction of the business of insurance in the state, unless such corporation has first procured from the insurance commissioner, as hereinafter provided, a certificate that the corporation has fully complied with the provisions of this article, and is authorized to sell the securities. Every certificate issued by the insurance commissioner pursuant to the provisions of this article shall state in bold type that the commissioner in no way recommends the securities thereby authorized to be sold, and shall be renewable annually, upon written application, filed on or before the first day of April of each year, and may be revoked for cause at any time by the commissioner. The commissioner shall pre-

pare and furnish upon request suitable blank forms of application for the certificates required by this article.

C. S., s. 6384; 1913, c. 182, s. 2.

780. Application for certificate by agent. Every individual, partnership, association, or corporation desiring or intending to sell or to offer for sale in this state the securities of insurance corporations or of any holding or promoting corporations shall file with the insurance commissioner an application for a certificate of such authority. This application must contain a statement, verified by oath, setting forth the name and address of the applicant, previous business experience, date and place of birth or organization and such other information as the commissioner requires. It is the duty of the commissioner to examine the application and to make any further inquiry or examination of the applicant as he deems advisable. If upon examination the commissioner finds the applicant, or if a corporation, the officers and directors thereof, to be trustworthy persons of good business credit, he may issue to the applicant a certificate of authority to sell or offer for sale in this state the securities of any insurance corporation, and of any promoting or holding corporation previously authorized under this article, which shall be mentioned therein.

C. S., s. 6385; 1913, c. 182, s. 3.

781. Application for certificate by corporation. Every such unauthorized insurance corporation, and every promoting or holding corporation, whose securities are offered for sale in this state, must file with the insurance commissioner copies of all securities to be offered for sale, and an application for certificate of authority under this article which shall contain a statement in detail of the plans and purposes of such corporation, the amount and par value of the securities to be offered for sale, and the selling price thereof, the manner in which the money paid in therefor is to be spent or employed, the rate of commission to be paid for the sale of such securities, the salaries to be paid to the officers of such corporation, and such other information as the insurance commissioner requires. No change shall thereafter be made in the form or character of the securities to be offered for sale, or in the plans or purposes of any such corporation, without the approval thereof in writing by the commissioner. It is the duty of the commissioner to examine the application and other documents filed, and to make any further inquiry or examination of the corporation as he deems advisable. If upon examination the commissioner finds that the plans and purposes of the corporation are

proper, that its condition is satisfactory, that the amount of its securities is reasonable, that the price at which such securities are to be sold is adequate, and that the manner in which the money paid in therefor, the rate of commissions to be paid and the salaries of officers are fair, he may issue a certificate that the corporation has complied with all the provisions of this article, and is authorized to sell or offer its securities for sale in this state.

C. S., s. 6386; 1913, c. 182, s. 4.

782. Approval of advertising matter; misrepresentation. No printed matter may be used in connection with the sale of securities of any such promoting, holding, or insurance corporation, for advertising purposes, or in the dissemination of information with reference thereto, unless it is first submitted to the insurance commissioner and approved by him in writing. No such corporation, and no officer, director, or agent thereof, or any other person, copartnership, association, or corporation may issue, circulate, or employ or cause or permit to be used, issued, circulated, or employed any circular or statement, whether printed or oral, misrepresenting or exaggerating the earnings of insurance corporations or the value of their corporate stock or other securities, or the profits to be derived either directly or indirectly from the organization and management of insurance corporations, or of organizing or holding corporations. No insurance or other corporation, and no individual, copartnership, or association transacting business in this state shall place or offer to place insurance in any corporation in connection with the sale or purchase of the securities of any insurance corporation or of any promoting or holding corporation.

C. S., s. 6387; 1913, c. 182, s. 5.

ART. 13. RATE-MAKING COMPANIES.

783. Information to be filed with insurance commissioner. Every corporation, association, board, or bureau which now exists or hereafter may be formed, and every person who maintains, or hereafter may maintain, a bureau or office for the purpose of suggesting, approving or making rates to be used by more than one underwriter for insurance, including surety bonds, on property or risks of any kind located in this state, shall file with the insurance commissioner a copy of the articles of agreement, association, or incorporation and the by-laws and all amendments thereto under which such person, association, or bureau operates

or proposes to operate, together with his or its business address and a list of the members or insurance corporations represented or to be represented by him or it, as well as such other information concerning such rating organization and its operations as may be required by the insurance commissioner.

C. S., s. 6388; 1913, c. 145, s. 1; 1915, c. 166, s. 8.

784. Examination by insurance commissioner; reports. Every such person, corporation, association, or bureau, whether before or after the filing of the information specified in the preceding section, shall be subject to the visitation, supervision, and examination of the insurance commissioner, who shall cause to be made an examination thereof as often as he deems it expedient, and at least once in three years. For such purpose he may appoint as examiners one or more competent persons, and upon such examination he, his deputy, or any examiner authorized by him shall have all the powers given to the insurance commissioner, his deputy, or any examiner authorized by him by law, including the power to examine under oath the officers and agents and all persons deemed to have material information regarding the business or manner of operation by every such person, corporation, association, bureau, or board. The insurance commissioner shall make public the results of such examination, and shall report to the legislature in his annual report on the methods of such rating organization and the manner of its operation.

C. S., s. 6389; 1913, c. 145, s. 2.

785. Schedule of rates filed. Every such person, corporation, association, or bureau, as well as every insurance company doing business in the state, shall file with the insurance commissioner, whenever he may call therefor, any and every schedule of rates or such other information concerning such rates as may be suggested, approved, or made by any such rating organization for the purposes specified in section 6388 (herein 783), or by such company for its own use.

C. S., s. 6390; 1913, c. 145, s. 3; 1915, c. 166, s. 8.

786. Certain conditions forbidden; no discrimination. No such person, corporation, association, or bureau shall fix or make any rate or schedule of rates which is to or may apply to any risk within this state, on the condition that the whole amount of insurance on such risk or any specified part thereof shall be placed at such rates, or with the members of or subscribers to such rating organization; nor shall any such person, association, or cor-

poration authorized to transact the business of insurance within this state, fix or make any rate or schedule of rates or charge a rate which discriminates unfairly between risks within this state of essentially the same hazard, or if such rate be a fire insurance rate, which discriminates unfairly between the risks in the application of like charges or credits or which discriminates unfairly between risks of essentially the same hazards and having substantially the same degree of public protection against fire. Whenever it is made to appear to the satisfaction of the insurance commissioner that such discrimination exists, he may, after a full hearing, either before himself or before any salaried employee of the insurance department whose report he may adopt, order such discrimination removed; and all such persons, corporations, associations, or bureaus affected thereby shall immediately comply therewith; nor shall such persons, corporations, associations, or bureaus remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it is made to appear to the satisfaction of the insurance commissioner that such increase is justifiable.

C. S., s. 6391; 1913, c. 145, s. 4.

787. Record to be kept; hearing on rates. Every such rating organization shall keep a careful record of its proceedings and shall furnish upon demand to any person upon whose property or risk a rate has been made, or to his authorized agent, full information as to such rate, and if such property or risk be rated by schedule, a copy of such schedule; it shall also provide such means as may be approved by the insurance commissioner whereby any person affected by such rate may be heard, either in person or by agent, before the governing or rating committee or other proper executive of such rating organization on an application for a change in such rate.

C. S., s. 6392; 1913, c. 145, s. 5.

788. Hearing on rates before insurance commissioner. Any person, firm, or corporation aggrieved by any rating of a fire insurance company, bureau, or board, may file a complaint in writing with the insurance commissioner stating in detail the grounds upon which the complainant asks relief. The commissioner shall set a time, not earlier than seven days after the date of the notice, and a place for a hearing upon the complaint. After due hearing

the commissioner shall make a finding as to whether the established rate is excessive or unfair, and shall make such recommendations as he deems advisable. The finding and recommendations in each case shall be made a matter of record, and shall be open to public inspection.

C. S., s. 6393; 1915, c. 166, s. 8.

789. Certain insurance contracts excepted. This article shall not apply to any contract of life insurance, nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property or risks located without this state, nor to contracts made by persons, partnerships, associations, or corporations authorized to do business on the mutual or co-operative plan as associations or societies, nor title and credit insurance.

C. S., s. 6394; 1913, c. 145, s. 6.

ART. 14. REAL-ESTATE TITLE INSURANCE COMPANIES.

790. Purposes of organization. Companies may be formed in the manner provided in this subchapter, with a capital of not less than fifty thousand dollars nor more than two hundred and fifty thousand dollars, for the purpose of examining titles to real estate, of furnishing information in relation thereto, and of insuring owners and others interested therein against loss by reason of encumbrances and defective title. Such companies shall not be subject to the provisions of this chapter except as regards the manner of their formation and as provided in this article.

C. S., s. 6395; Rev., s. 4745; 1899, c. 54, s. 38; 1901, c. 391, s. 3.

791. Certificate of authority to do business. Before any such company may issue any policy or make any contract or guarantee of insurance, it shall file with the insurance commissioner a certified copy of the record or the certificate of its organization in the office of the secretary of state, and obtain from the insurance commissioner his certificate that it has complied with the laws applicable to it and that it is authorized to do business.

C. S., s. 6396; Rev., s. 4745; 1899, c. 54, s. 38; 1901, c. 391, s. 3.

792. Annual statement and license required. Every such corporation shall, on or before the thirtieth day of January of each year, file in the office of the insurance commissioner a statement,

such as he may require, showing its condition and its affairs for the year ending on the preceding thirty-first day of December, signed and sworn to by its president or secretary or treasurer and one of its directors. For neglect to file such annual statement or for making a wilfully false statement it shall be liable to the same penalties imposed upon other insurance companies. The insurance commissioner shall annually license such companies and their agents, and have the same power and authority to visit and examine such corporations as he has in the case of other domestic insurance companies; and the duties and liabilities of such corporations and their agents in reference to such examinations are the same as those of other domestic insurance companies.

C. S., s. 6397; Rev., s. 4745; 1899, c. 54, s. 38; 1901, c. 391, s. 3.

ART. 15. FOREIGN INSURANCE COMPANIES.

793. Admitted to do business. Foreign insurance companies, upon complying with the conditions herein set forth applicable to them, may be admitted to transact in this state, by constituted agents resident herein, any class of insurance authorized by the laws in force relative to the duties, obligations, prohibitions, and penalties of insurance companies, and subject to all laws applicable to the transaction of such business by foreign insurance companies and their agents.

C. S., s. 6410; Rev., s. 4746; 1899, c. 54, s. 61.

794. Conditions of admission. A foreign insurance company may be admitted and authorized to do business when it:

1. Deposits with the insurance commissioner a certified copy of its charter or certificate of organization and a statement of its financial condition and business, in such form and detail as he requires, signed and sworn to by its president and secretary or other proper officer, and pays for the filing of this statement the sum required by law.

2. Satisfies the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that it has, if a stock company, a fully paid-up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less than \$100,000 (but nothing in this subsection applies to companies now authorized to do business in this state); and if a

mutual company, other than life, that its net cash assets are equal to the capital required of like companies on the stock plan; or that it possesses net cash assets of not less than \$100,000 or net cash assets of not less than \$50,000, with, also, invested assets of not less than \$100,000, and in each case with additional contingent assets of not less than \$300,000, and that such capital or net assets are well invested and immediately available for the payment of losses in this state; and that it insures on any single hazard a sum no larger than one-tenth of its net assets.

3. By a duly executed instrument filed in his office constitutes and appoints the insurance commissioner and his successor its true and lawful attorney, upon whom all lawful processes in any action or legal proceeding against it may be served, and therein agrees that any lawful process against it which may be served upon such attorney shall be of the same force and validity as if served on the company, and that it will not have removed from any court of this state to the United States circuit or district court any action instituted against it, and that it will not institute any action or suit in equity in the United States courts against any citizen of this state growing out of, or in any way connected with, any policy of insurance issued by it; and the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state. Copies of this instrument, certified by the insurance commissioner, are sufficient evidence thereof, and service upon such attorney is sufficient service upon the principal.

4. Appoints as its agent or agents in this state some resident or residents thereof.

5. Obtains from the insurance commissioner a certificate that it has complied with the laws of the state and is authorized to make contracts of insurance. If a fire insurance company, it must also comply with the provisions of this chapter as to deposits and reinsurance by such companies.

C. S., s. 6411; Rev., s. 4747; 1899, c. 54, s. 62; 1901, c. 391, s. 5; 1903, c. 438, s. 6.

Insurance § 627. Neither a resident of Virginia who is an assignee of a policy issued by a New York corporation to a citizen of North Carolina, which stipulates that it is a New York contract, nor his cause of action thereon, is within this section.—*Williams v. Mutual Reserve Fund Life Ass'n*, 145 N. C. 128, 58 S. E. 802.

Insurance § 22. The power of attorney is irrevocable, and in force as long as any liability of such company existed in the state, though the company had ceased to do business in the state through any local officer or agent, and service of process against such company thereafter on the insurance commissioner was a valid service.—*Biggs v. Mutual Reserve Fund Life Ass'n*, 128 N. C. 5, 37 S. E. 955; *Mutual Reserve Fund Life Ass'n v. Scott*, 136 N. C. 157, 48 S. E. 581.

Section referred to in *Brown v. Jackson*, 179 N. C. 363, 102 S. E. 739.

795. Limitation as to classes of business. No insurance company admitted to do business in the state may be authorized to transact more than one class or kind of insurance therein, unless it has the requisite capital for such business engaged in, and such a company may undertake two or more of the classes of insurance set out in article six, section 6327, of this chapter (herein 721), upon providing for each additional kind at least fifty thousand dollars additional capital. But if life, fire, and credit insurance is added to any other line or lines, the additional capital shall be one hundred thousand dollars each, and the company shall pay the license taxes and fees for each class or kind of insurance provided by this chapter.

C. S., s. 6412; Rev., s. 4748; 1899, c. 54, s. 65; 1901, c. 391, s. 5; 1903, c. 438, s. 6; 1911, c. 111, s. 2.

796. Reciprocal laws. When, by the laws of any other state or nation, any taxes, fines, penalties, licenses, fees, deposits of money or of securities, or other obligations or prohibitions are imposed upon insurance companies of this state doing business in such other state or nation or upon their agents therein, then, so long as such laws continue in force, the same taxes, fines, penalties, licenses, fees, deposits, obligations and prohibitions, of whatever kind, shall be imposed upon all such insurance companies of such other state or nation doing business within this state and upon their agents here. Nothing herein repeals or reduces the license, fees, taxes, and other obligations now imposed by the laws of this state or to go into effect with the companies of any other state or nation unless some company of this state is actually doing or seeking to do business in such state or nation. When an insurance company organized under the laws of any state or country is prohibited by the laws of such state or country or by its charter from investing its assets other than capital stock in the bonds of this state, then and in such case the insurance commissioner is authorized and directed to refuse to grant a license to transact business in this state to such insurance company.

C. S., s. 6413; Rev., s. 4749; 1899, c. 54, s. 71; 1903, c. 536, s. 11.

797. Service of legal process upon insurance commissioner. The service of legal process upon any foreign insurance company, admitted and authorized to do business in this state under the provisions of this chapter, shall be made by leaving the same in the hands or office of the insurance commissioner, and no service upon a company that is licensed to do business in this state is valid unless made upon the insurance commissioner, the general agent for service, or some officer of the company. As a condition precedent to a valid service of process and of the duty of the commissioner in the premises, the plaintiff shall pay to the insurance commissioner at the time of service the sum of one dollar, which the plaintiff shall recover as taxable costs if he prevails in his action. In any action of which a justice of the peace has jurisdiction, summons may be served on any licensed agent of such company, returnable in not less than ten days from date of service; if there is no such agent in the county, then the summons may be served as provided for in other actions against foreign corporations in a court of a justice of the peace.

C. S., s. 6414; Rev., s. 4750; 1899, c. 54, ss. 16, 62; 1903, c. 438, s. 6.

Insurance § 814. If a foreign corporation has not obtained a license, and is not subject to this section it is subject to Consolidated Statutes, sections 483, 1137, (herein 21 and 59) relating to foreign corporations in general.—*Oliver v. United States Fidelity & Guaranty Co.*, 174 N. C. 417, 93 S. E. 948.

Insurance § 626. Service of process on an insurance company is not restricted to the method prescribed by this section but may also be made in the manner prescribed by section 1137 (herein 59).—*Pardue v. Absher*, 174 N. C. 676, 94 S. E. 414; *Fisher v. Traders Mutual Life Ins. Co.*, 136 N. C. 217, 48 S. E. 667.

Insurance § 626. Where there has been no specific finding by the trial judge that defendant insurance company was licensed to do business within the state, it would be presumed, on appeal, in support of his determination that a service otherwise made was valid, that such was not the case.—*W. P. Parker & Co. v. Continental Ins. Co.*, 143 N. C. 339, 55 S. E. 717.

Insurance § 626. In an action against a foreign fraternal insurance society doing business in this state, service of summons on the commissioner of insurance brings the corporation into court.—*Brenizer v. Royal Arcanum*, 141 N. C. 409, 53 S. E. 835.

Insurance § 626. Service of process on the state insurance commissioner is valid although the insurance company has not been domesticated.—*Hinton v. Mutual Reserve Fund Ins. Co.*, 135 N. C. 314, 47 S. E. 474.

798. Duty of commissioner when served with process. When legal process is served upon the insurance commissioner as attorney for a foreign company, under the provisions of this chapter,

he shall immediately notify the company of such service by letter prepaid and directed to its secretary, or in the case of a foreign country, to its resident manager, if any, in the United States; and must within two days after such service forward in the same manner a copy of the process served on him to such secretary or manager, or to such other person previously designated by the company by written notice filed in the office of the commissioner. The commissioner must keep a record of all such proceedings, which shall show the day and hour of service of the process on the commissioner.

C. S., s. 6415; Rev., s. 4751; 1899, c. 54, s. 16.

799. Action to enforce compliance with this chapter. Compliance with the provisions of this chapter as to deposits, obligations, and prohibitions, and the payment of taxes, fines, fees, and penalties by foreign insurance companies, may be enforced in the ordinary course of legal procedure by action brought in the superior court of Wake county by the attorney-general in the name of the state upon the relation of the insurance commissioner.

C. S., s. 6416; Rev., s. 4752; 1899, c. 54, s. 102; 1903, c. 438, s. 10.

ART. 16. REGULATION OF LIFE INSURANCE COMPANIES.

800. Life insurance company defined; requisites of contract. All corporations, associations, partnerships, or individuals doing business in this state, under any charter, compact, agreement, or statute of this or any other state, involving the payment of money or other thing of value to families or representatives of policy and certificate holders or members, conditioned upon the continuance or cessation of human life, or involving an insurance, guaranty, contract, or pledge for the payment of endowments or annuities, or who employ agents to solicit business, are life insurance companies, in all respects subject to the laws herein made and provided for the government of life insurance companies, and shall not make any such insurance, guaranty, contract, or pledge in this state with any citizen, or resident thereof, which does not distinctly state the amount of benefits payable, the manner of payment, and the consideration therefor.

C. S., s. 6455; Rev., s. 4773; 1899, c. 54, s. 55.

Insurance § 138. The provision that no insurance company shall sell any policy granting insurance in an amount less than \$500.00 until the forms

have been approved by the insurance commissioner is held a restriction on the insurance company and not on the contract, and does not invalidate a policy for less than that amount.—Blount v. Royal Fraternal Ass'n, 163 N. C. 167, 79 S. E. 299.

Insurance § 138. The provision that no life insurance company may afford any special favor or advantage in premium rates to or discriminate among its policyholders, is a restriction applicable to the company; and where the insured has, in good faith, entered into a policy contract with the company whereby he has secured a policy at a reduced rate of premium, the parties are not *in pari delicto*.—Robinson v. Security Life & Annuity Company, 163 N. C. 415, 79 S. E. 681.

801. Foreign companies; requirements for admission. A company organized under the laws of any other of these United States for the transaction of life insurance may be admitted to do business in this state if it complies with the other provisions of this chapter regulating the terms and conditions upon which foreign life insurance companies may be admitted and authorized to do business in this state, and, in the opinion of the insurance commissioner, is in sound financial condition and has policies in force upon not less than five hundred lives for an aggregate amount of not less than five hundred thousand dollars. Any life company organized under the laws of any other country than the United States, in addition to the above requirements, must make and maintain the deposit required of such companies by article four of this chapter.

C. S., s. 6456; Rev., s. 4774; 1899, c. 54, s. 56.

802. Soliciting agent represents the company. A person who solicits an application for insurance upon the life of another, in any controversy relating thereto between the insured or his beneficiary and the company issuing a policy upon such application, is the agent of the company and not of the insured.

C. S., s. 6457; 1907, c. 958, s. 1.

SUBCHAPTER III.

FRATERNAL ORDERS AND SOCIETIES.

ART. 17. FRATERNAL ORDERS.

803. General insurance law not applicable. Nothing in the general insurance laws, except such as apply to fraternal orders or fraternal societies, shall be construed to extend to benevolent associations, incorporated under the laws of this state that only levy an assessment on the members to create a fund to pay the family of a deceased member and make no profit therefrom, and do not solicit business through agents. Such benevolent associations providing death benefits in excess of three hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, shall be known as "fraternal benefit societies"; and those providing benefits of three hundred dollars or less shall be known as "fraternal orders."

C. S., s. 6491; Rev., s. 4794; 1899, c. 54, s. 87; 1901, c. 706, s. 2; 1913, c. 46.

Insurance § 687. Fraternal insurance orders are such as make provision for sick and death benefits and they are subject to the same rules, regulations, and supervision as foreign insurance companies, when operated from beyond the state, except that they are not required to make the deposit or have the paid up capital required of other companies.—State v. Arlington, 157 N. C. 640, 73 S. E. 122.

Insurance § 770. A member of a mutual benefit society may select any one as his beneficiary, unless restricted by the rules of the society or by statute.—Pollock v. Household of Ruth, 150 N. C. 211, 63 S. E. 940.

See Gay v. Woodmen of World, 179 N. C. 210, 102 S. E. 195; Hollingsworth v. Supreme Council, Royal Arcanum, 175 N. C. 615, 96 S. E. 81.

804. Fraternal orders defined. Every incorporated association, order, or society doing business in this state on the lodge system, with ritualistic form of work and representative form of government, for the purpose of making provision for the payment of benefits of three hundred dollars or less in case of death, sickness, temporary or permanent physical disability, either as the result of disease, accident, or old age, formed and organized for the sole benefit of its members and their beneficiaries, and not for profit, is hereby declared to be a "fraternal order." Societies and orders which do not make insurance contracts or collect dues or assessments therefor, but simply pay burial or other benefits out of the treasury of their orders, and use their funds for the

purpose of building homes or asylums for the purpose of caring for and educating orphan children and aged and infirm people in this state, shall not be considered as "fraternal orders" or "fraternal benefit societies" under this subchapter; and such order or association paying death or disability benefits may also create, maintain, apply, or disburse among its membership a reserve or emergency fund as may be provided in its constitution or by-laws; but no profit or gain may be added to the payments made by a member.

C. S., s. 6492; Rev., s. 4795; 1899, c. 54, s. 88; 1901, c. 706, s. 3; 1907, c. 936; 1913, c. 46.

See *Gay v. Woodmen of World*, 179 N. C. 210, 102 S. E. 195; *Hollingsworth v. Supreme Council, Royal Arcanum*, 175 N. C. 615, 96 S. E. 81; *Brenizer v. Royal Arcanum*, 141 N. C. 409, 53 S. E. 835.

805. Funds derived from assessments and dues. The fund from which the payment of benefits, as provided for in the next preceding section, shall be made, and the fund from which the expenses of such association, order, or society shall be defrayed, shall be derived from assessments or dues collected from its members. Such societies or associations shall be governed by the laws of the state governing fraternal orders or societies, and are exempt from the provisions of all general insurance laws of this state, and no law hereafter passed shall apply to such societies unless fraternal orders or societies are designated therein.

C. S., s. 6493; Rev., s. 4796; 1899, c. 54, s. 89; 1901, c. 706, s. 2; 1913, c. 46.

See *Brenizer v. Royal Arcanum*, 141 N. C. 409, 53 S. E. 835.

806. Assessments and dues; collection. Assessments and dues referred to in the two preceding sections may be collected, receipted and remitted by a member or officer of any local or subordinate lodge of any fraternal order or society when so appointed or designated by any grand, district or subordinate lodge or officer, deputy or representative of the same, there being no regular licensed agent or deputy of said grand lodge charged with said duties. But any person so collecting said dues or assessments shall be the agent representative of such fraternal order or society or any department thereof, and shall bind them by their acts in collecting and remitting said amounts so collected. Under no circumstances, regardless of any agreement, by-law, contract or notice, shall said officer or collector be the agent or representative of the individual member from whom any such collection is made; nor shall said member be responsible for the failure of such officer or collector to safely keep, handle or remit

said dues or assessments so collected, in accordance with the rules, regulations, or by-laws of said society; nor shall said member, regardless of any rules, regulations, or by-laws to the contrary, forfeit any rights under his certificate or membership in said fraternal benefit society by reason of any default or misconduct of any said officer or member so acting.

C. S., s. 6493-a; 1921, c. 139, s. 1.

807. Meetings of governing body; principal office; separation of races. Any such society or order incorporated and organized under the laws of this state may provide for the meeting of its supreme legislative or governing body in any other state, province, or territory wherein such society has subordinate lodges, and all business transacted at such meetings is as valid in all respects as if the meetings were held in this state; but the principal business office of such society shall always be kept in this state. No fraternal order or society or beneficiary association shall be authorized to do business in this state under the provisions of this article, whether incorporated under the laws of this or any other state, province, or territory, which associates with, or seeks in this state to associate with, as members of the same lodge, fraternity, society, association, the white and colored races with the objects and purposes provided in this article.

C. S., s. 6494; Rev., s. 4797; 1899, c. 54, s. 91; 1913, c. 46.

808. Conditions precedent to doing business. Any such fraternal, beneficiary order, society, or association as defined by this chapter, chartered and organized in this state or organized and doing business under the laws of any other state, district, province, or territory, having the qualifications required of domestic societies of like character, upon satisfying the insurance commissioner that its business is proper and legitimate and so conducted, may be admitted to transact business in this state upon the same conditions as are prescribed by this chapter for admitting and authorizing foreign insurance companies to do business in this state, except that such fraternal orders shall not be required to have the capital required of such insurance companies.

C. S., s. 6495; Rev., s. 4798; 1899, c. 54, s. 92; 1901, c. 706, s. 2; 1903, c. 438, s. 9; 1913, c. 46.

809. Certain lodge systems exempt. Beneficial fraternal orders, or societies incorporated under the laws of this state which are conducted under the lodge system, having the supreme lodge or

governing body located in this state, and so organized that the membership consists of members of subordinate lodges, and the subordinate lodges accept for membership none but residents of the county in which such subordinate lodge is located, and each subordinate lodge issues certificates, makes assessments, and collects a fund to pay benefits to the widows and orphans of its own deceased members and their families, each lodge, independently of the other, for itself, and independently of the supreme lodge, each lodge controlling the fund for this purpose, and in addition to the benefits paid by each subordinate lodge to its own members, the supreme lodge provides for an additional benefit for such of the members of the subordinate lodges as are qualified, at the option of the subordinate lodge member, and such organization is not conducted for profit, has no capital stock, and has been in operation for ten years in this state, such beneficial orders or societies shall be exempt from the requirements of this chapter, and shall not be required to pay any license tax or fees nor make any report to the insurance commissioner, unless the assessments collected for death benefits by the supreme lodge amount to at least three hundred dollars in one year. The insurance commissioner may require the chief or presiding officer, or the secretary, to file annually an affidavit that such organization is entitled to this exemption.

C. S., s. 6496; 1911, c. 199.

ART. 18. FRATERNAL BENEFIT SOCIETIES.

810. Fraternal benefit society defined. Any corporation, society, order, or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which makes provision for the payment of benefits as hereafter prescribed in this article, is declared to be a fraternal benefit society.

C. S., s. 6497; 1913, c. 89, s. 1.

811. Lodge system defined. A society having a supreme governing or legislative body and subordinate lodges or branches, by whatever name known, into which members are elected, initiated, and admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches are required by the laws of such

society to hold regular or stated meetings at least once in each month, is deemed to be operating on the lodge system.

C. S., s. 6498, 1913, c. 89, s. 2.

812. Representative form of government defined. A society is deemed to have a representative form of government when it provides in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws: Provided, that the elective members constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws; and Provided further, that the meetings of the supreme or governing body, and the election of officers, representatives, or delegates, are held as often as once in four years. The members, officers, representatives, or delegates of a fraternal benefit society shall not vote by proxy.

C. S., s. 6499; 1913, c. 89, s. 3.

813. Organization. 1. *Application.* Ten or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this article, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation in which shall be stated:

a. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or lead to confusion.

b. The purpose for which it is formed—which shall not include more liberal powers than are granted by this article: Provided, that any lawful, social, intellectual, educational, charitable, benevolent, moral, or religious advantages may be set forth among the purposes of the society—and the mode in which its corporate powers are to be exercised.

c. The names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

2. *Papers and bond filed.* Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor, and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the insurance commissioner, conditioned upon the return of the advance payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the insurance commissioner, who may require such further information as he deems necessary.

3. *Preliminary license.* If the purposes of the society conform to the requirements of this article, and all provisions of law have been complied with, the insurance commissioner shall so certify to the secretary of state, and upon his issuing the articles of incorporation shall furnish the incorporators a preliminary license authorizing the society to solicit members as hereinafter provided.

4. *Completion of organization.* Upon receipt of such license from the insurance commissioner the society may solicit members for the purpose of completing its organization, and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each applicant a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, or the largest amount written on any one person, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated; nor until there has been submitted to the insurance commissioner under oath of the president and secretary, or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of

which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued for death benefits upon the basis of the national fraternal congress table of mortality, as adopted by the national fraternal congress, August twenty-third, one thousand eight hundred and ninety-nine, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience, and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent per annum; nor until it shall be shown to the insurance commissioner by the sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars. Such advanced payments shall be credited to the mortuary or disability fund on account of such applicants, and no part thereof may be used for expenses, but such payments shall be held in trust and returned to the applicants if the organization is not completed within one year as hereinafter provided.

5. *License issued.* The insurance commissioner may make such examination and require such further information as he deems advisable, and, upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate or license to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate.

6. *One-year limit.* No preliminary certificate or license granted under the provisions of this section shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the insurance commissioner, upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided; and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of such preliminary certificate, or at the expiration of such extended period, unless the society shall have completed its organization and commenced business as herein provided.

7. *Discontinuance.* When any domestic society shall have dis-

continued business for the period of one year, or has less than four hundred members, its charter shall become null and void.

C. S., s. 6500; 1913, c. 89, s. 11.

814. Constitution and by-laws. Each society shall have power to make a constitution and by-laws for the government of the society, the admission of its members, the management of its affairs, and the fixing and readjusting of the rates of contribution of its members from time to time; it shall have the power to change or amend such constitution and by-laws, and it shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

C. S., s. 6501; 1913, c. 89, s. 11.

815. Amendments to constitution and by-laws. Every society transacting business under this article shall file with the insurance commissioner a duly certified copy of all amendments of or additions to its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws as amended, changed or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

C. S., s. 6502; 1913, c. 89, s. 19.

See *Wilson v. Supreme Conclave, Improved Order of Heptasophs*, 174 N. C. 628, 94 S. E. 443.

816. Waiver of the provisions of the laws. The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members, shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof, and on all beneficiaries of members.

C. S., s. 6503; 1913, c. 89, s. 17.

817. Place of meeting; location of office. Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province, or territory wherein such society has subordinate branches, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state; but its principal office shall be located in this state.

C. S., s. 6504; 1913, c. 89, s. 15.

818. No personal liability for benefits. Officers and members of the supreme, grand, or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society; but the same shall be payable only out of the funds of such society and in the manner provided by its laws.

C. S., s. 6505; 1913, c. 89, s. 16.

819. Qualifications for membership. Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society: Provided, that any beneficiary member of such society who shall apply for a certificate providing for disability benefits need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members.

C. S., s. 6506; 1913, c. 89, s. 6.

820. Benefits. 1. Every society transacting business under this article shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident, or old age: Provided, the period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years, and may provide for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificate as the laws of the society may provide; but nothing contained in this article shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life, which are payable upon the death or disability of the member occurring within the term for which the benefit certificate may be issued. Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate, with interest payable or compounded annually at a rate not lower than four per cent per annum; but this privilege

shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contribution, and to contracts affected by such readjustment.

2. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve not lower than the usual reserve computed by the American experience table and four per cent interest may grant to its members extended and paid-up protection, or such withdrawal equities as its constitution and laws may provide; but such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made.

C. S., s. 6507; 1913, c. 89, s. 4.

821. Beneficiaries. The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, step-father, stepmother, step-children, children by legal adoption, or to a person or persons dependent upon the member; but if after the issuance of the original certificate the members shall become dependent upon an incorporated charitable institution, he shall have the privilege, with the consent of the society, to make such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and, from time to time, have the same changed in accordance with the laws, rules or regulations of the society, and no beneficiary shall have or obtain any vested interest in such benefit until the same has become due and payable upon the death of the member. Any society may, by its laws, limit the scope of beneficiaries within the above classes.

C. S., s. 6508; 1913, c. 89, s. 5.

822. Benefit certificates. Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter, or articles of incorporation or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member; and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions, or amendments to the charter or articles of incorporation, or articles of association if a voluntary associa-

tion, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate, shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for membership.

C. S., s. 6509; 1913, c. 89, s. 7.

823. Benefits not subject to debts. No money or other benefit, charity or relief or aid to be paid, provided, or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment.

C. S., s. 6510; 1913, c. 89, s. 18.

824. Funds provided. 1. Any society may create, maintain, invest, disburse, and apply an emergency, surplus, or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in subsection two of section 6507 (herein 820). The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. But no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the national fraternal congress table of mortality as adopted by the national fraternal congress, August twenty-third, one thousand eight hundred and ninety-nine, or any higher standard, with interest assumption not more than four per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent per annum.

2. Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be

paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

C. S., s. 6511; 1913, c. 89, s. 8.

825. Investment of funds. Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies: Provided, that any foreign society permitted or seeking to do business in this state, which invests its funds in accordance with the laws of the state in which it is incorporated where it has such laws, shall be held to meet the requirements of this article for the investment of funds.

C. S., s. 6512; 1913, c. 89, s. 9.

826. Application of funds. Every provision of the laws of the society for payment by its members, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses.

C. S., s. 6513; 1913, c. 89, s. 10.

827. Powers of existing societies retained; reincorporation. Any society now engaged in transacting business in this state may exercise, after the passage of this article, all of the rights conferred thereby, and all the rights, powers, and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this article, if incorporated; or, if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided by law.

C. S., s. 6514; 1913, c. 89, s. 12.

828. Mergers and transfers. No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and is filed with the insurance commissioner of this state, together with a sworn statement of the financial condition of each of the societies, by its president and secretary or corresponding officers, and a certificate duly verified

under oath of said officers of each of the contracting societies that such merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of the societies.

Upon the submission of such contract, financial statements, and certificates, the insurance commissioner shall examine the same, and if he shall find such financial statements to be correct and the contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of the societies, he shall approve the merger or transfer, issue his certificate to that effect, and thereupon the contract of merger or transfer shall be of full force and effect.

In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by the insurance commissioner.

C. S., s. 6515; 1913, c. 89, s. 13.

829. Annual license. Societies authorized to transact business in this state may have their authority renewed annually, but in all cases to terminate on the first day of the succeeding April; and the license shall, upon payment of license fee, continue in full force and effect until the new license is issued or specifically refused. For each license or renewal the society shall pay the insurance commissioner twenty-five dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this article.

C. S., s. 6516; 1913, c. 89, s. 14.

830. Accident societies may be licensed. Any fraternal benefit society heretofore organized and incorporated, and operating within the definition set forth in this article, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this article, and shall have all the privileges and be subject to all the provisions and regulations of this article, except the provisions requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits.

C. S., s. 6517; 1913, c. 89, s. 27.

831. Certain societies not included. Nothing contained in this article shall be construed to affect or apply to societies which limit their membership to any one hazardous occupation, nor to

similar societies which do not issue insurance certificates, nor to an association of local lodges of a society now doing business in this state which provides death benefits not exceeding five hundred dollars to any one person or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this state, nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house, or corporation, nor to domestic lodges, orders, or associations of a purely religious, charitable, and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year. The insurance commissioner may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this article.

C. S., s. 6518; 1913, c. 89, s. 26.

832. Reports to insurance commissioner. 1. *Annual report.* Every society transacting business in this state shall annually, on or before the first day of March, file with the insurance commissioner, in such form as he may require, a statement, under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for the year ending on that date, and also shall furnish such other information as the commissioner may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement he may deem necessary to be made relating to such society.

2. *Valuation of certificates.* In addition to the annual report herein required, each society shall annually report to the commissioner a valuation of its certificates in force on December thirty-first, last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses: Provided, the first report of valuation shall be made as of December thirty-first, one thousand nine hundred and twelve. Such report of valuation shall show, as contingent liabilities, the present mid-year value of the promised benefits provided in the constitution and laws of such society under certificates then subject to valuation; and as contingent assets, the present mid-year value of the future net contributions provided in

the constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and the net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

3. *Valuation ascertained.* Such valuation shall be certified by a competent accountant or actuary, or at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the national fraternal congress table of mortality as adopted by the national fraternal congress, August twenty-third, one thousand eight hundred and ninety-nine, or, at the option of the society, any higher table; or, at its option, it may use a table based upon the society's own experience of at least twenty years and covering not less than one hundred thousand lives with interest assumption not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society: Provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experience, and in such case a separation of the funds shall not be required.

4. *Test of solvency.* The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities.

5. *Report mailed to members.* A report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June first of any year, or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published

in the society's official paper, and the issue containing the same mailed to each beneficiary member of the society.

C. S., s. 6519; 1913, c. 89, s. 20.

833. Additional or increased rates. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws, additional, increased, or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per cent per annum.

C. S., s. 6520; 1913, c. 89, s. 20

834. Provisions to insure future security. If the valuation of the certificates, as hereinbefore provided, on December thirty-first, one thousand nine hundred and seventeen, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter maintain said financial condition at each succeeding triennial valuation in respect of the degree of efficiency as shown in the valuation as of December thirty-first, one thousand nine hundred and seventeen. If at any succeeding triennial valuation such society does not show at least the same condition, the commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the condition required herein, the commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, in accordance with the provisions of this article, or in the case of a foreign society, its license may be canceled in the manner provided in this article.

Any such society, shown by any triennial valuation, subsequent to December thirty-first, one thousand nine hundred and seventeen, not to have maintained the condition herein required, shall, within two years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December thirty-first, one thousand nine hundred and seventeen, or thereafter, as to all new members admitted, be subject, so far as stated rates of contributions are concerned, to the provisions of this article, applicable in the organization of new societies: Pro-

vided, that the net mortuary or beneficiary contributions and funds of such new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation, then the new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds.

C. S., s. 6521; 1913, c. 89, s. 20 (a).

835. Valuation on accumulation basis; tabular basis. In lieu of the requirements of the two preceding sections, any society accepting in its laws the provisions of this section may value its certificates on a basis herein designated "accumulation basis," by crediting each member with the net amount contributed for each year, and with interest at approximately the net rate earned and by basis pursuant to its laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society.

C. S., s. 6522; 1913, c. 89, s. 20 (b).

836. Examination of domestic societies. The insurance commissioner, or any person he may appoint, shall have power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers, and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents, and employees or other persons in relation to the affairs, transactions, and condition of the society.

The expense of such examination shall be paid by the society examined upon statement furnished by the insurance commissioner, and the examination shall be made at least once in three years.

C. S., s. 6523; 1913, c. 89, s. 21.

837. Proceedings for dissolution. When after examination the insurance commissioner is satisfied that any domestic society has failed to comply with any provision of this article, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred (or shall determine to dis-

continue business), the insurance commissioner may present the facts relating thereto to the attorney-general, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, it shall be enjoined from carrying on any further business, and a receiver shall be appointed to take possession of its books, papers, moneys, and other assets and immediately, under the direction of the court, proceed to close its affairs and distribute its funds to those entitled thereto.

No such proceedings, shall be commenced by the attorney-general against any such society until after notice has been duly served on its chief executive officers and a reasonable opportunity given to it, on a date to be named in the notice, to show cause why such proceedings should not be commenced.

C. S., s. 6524; 1913, c. 89, s. 21.

838. Proceedings only by attorney-general. No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in this state unless the same is made by the attorney-general.

C. S., s. 6525; 1913, c. 89, s. 22.

839. Examination of foreign societies. The insurance commissioner or any person whom he may appoint may examine any foreign society transacting or applying for admission to transact business in this state. The commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers, and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents, and employees and other persons in relation to the affairs, transactions, and condition of the society. He may, in his discretion, accept in lieu of such examination the examination of the insurance department of the state, territory, district, province, or country where such society is organized. The actual expenses of examiners making any such examination shall be paid by the society upon statement furnished by the insurance commissioner.

If any such society or its officers refuse to submit to such examination or to comply with the provisions of the section relative thereto, its authority to write new businesses in this state shall be suspended or license refused until satisfactory evidence is fur-

nished the commissioner relating to its condition and affairs, and during such suspension the society shall not write new business in this state.

C. S., s. 6526; 1913, c. 89, s. 23.

840. No adverse publications. Pending, during, or after an examination or investigation of any such society, either domestic or foreign, the insurance commissioner shall make public no financial statement, report, or finding, nor shall he knowingly permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any such society, until a copy thereof has been served upon the society, at its home office, nor until the society has been afforded a reasonable opportunity to answer any such financial statement, report, or finding, and to make such showing in connection therewith as it may desire.

C. S., s. 6527; 1913, c. 89, s. 24.

841. Revocation of license. When the insurance commissioner on investigation is satisfied that any foreign society transacting business under this article has exceeded its powers, or has failed to comply with any provisions of this article, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require the society, on a date named, to show cause why its license should not be revoked. If on the date named in the notice such objections have not been removed to the satisfaction of the commissioner, or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority to continue business in this state. All decisions and findings of the commissioner made under the provisions of this section, may be reviewed by proper proceedings in any court of competent jurisdiction, as provided in this article.

C. S., s. 6528; 1913, c. 89, s. 25.

842. Criminal offenses. Any person, officer, member, or examining physician of any society authorized to do business under this article who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred

dollars nor more than five hundred dollars, or imprisoned in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court.

Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided, to do business as herein defined in this state, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Any society, or any officer, agent, or employee thereof, neglecting or refusing to comply with, or violating, any of the provisions of this article, the penalty for which neglect, refusal, or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof.

C. S., s. 6529; 1913, c. 89, s. 28.

843. Consolidation, merger, or reinsurance of risks. No fraternal benefit society organized under the laws of this state to do the business of life, accident, or health insurance, shall consolidate or merge with any other fraternal benefit society, or reinsure its insurance risks, or any part thereof, with any other fraternal benefit society, or assume or reinsure the whole or any portion of the risks of any other fraternal benefit society, except as herein provided. No fraternal benefit society or subordinate body thereof shall merge, consolidate with or be reinsured by any company or association not licensed to transact business as a fraternal beneficiary society.

2. When any such fraternal benefit society shall propose to consolidate or merge its business or to enter into any contract of reinsurance, or to assume or reinsure the whole or any portion of the risks of any other fraternal benefit society the proposed contract in writing setting forth the terms and conditions of such proposed consolidation, merger or reinsurance shall be submitted to the legislative or governing bodies of each of said parties to said contract after due notice, and if approved, such contract as so approved, shall be submitted to the insurance commissioner of this state for his approval, and the parties to said contract shall at the same time submit a sworn statement showing the financial condition of each such fraternal benefit society as of the thirty-first day of December preceding the date of such contract: Provided, that such insurance commissioner may, within his discre-

tion, require such financial statement to be submitted as of the last day of the month preceeding the date of such contract. The insurance commissioner shall thereupon consider such contract of consolidation, merger or reinsurance, and if satisfied that the interests of the certificate holders of such fraternal benefit societies are properly protected, and that such contract is just and equitable to the members of each of such societies, and that no reasonable objection exists thereto, shall approve said contract as submitted. In case the parties corporate to such contract shall have been incorporated in separate states, or territories, such contract shall be submitted as herein provided to the insurance commissioner of each of such incorporating states, or territories, to be considered and approved separately by each of such insurance commissioners. When said contract of consolidation, merger or reinsurance shall have been approved as hereinabove provided, such insurance commissioners shall issue a certificate to that effect, and thereupon the said contract of consolidation, merger or reinsurance shall be in full force and effect. In case such contract is not approved the fact of its submission and its contents shall not be disclosed by the insurance commissioner.

3. All necessary and actual expenses and compensation incident to the proceedings provided hereby shall be paid as provided by such contract of consolidation, merger or reinsurance: Provided, however, that no brokerage or commission shall be included in such expenses and compensation or shall be paid to any person by either of the parties to any such contract in connection with the negotiation therefor or execution thereof, nor shall any compensation be paid to any officer or employee of either of the parties to such contract for directly or indirectly aiding in effecting such contract of consolidation, merger or reinsurance. An itemized statement of all such expenses shall be filed with the insurance commissioner, or commissioners, as the case may be, subject to approval, and when approved the same shall be binding on the parties thereto. Except as fully expressed in the contract of consolidation, merger or reinsurance, or itemized statement of expenses, as approved by the insurance commissioner, or commissioners, as the case may be, no compensation shall be paid to any person or persons, and no officer or employee of the state shall receive any compensation, directly or indirectly, for in any manner aiding, promoting or assisting any such consolidation, merger or reinsurance.

4. Any person violating the provisions of this act shall be guilty of a felony, and upon conviction shall be liable to a fine of not more than five thousand dollars, or to imprisonment for not more than five years, or to both fine and imprisonment.

1921, c. 60.

ART. 19. GENERAL PROVISIONS FOR SOCIETIES.

844. Appointment of trustees to hold property. The lodges of Masons, Odd Fellows, Knights of Pythias, camps of Woodmen of the World, councils of the Junior Order of United American Mechanics, orders of the Elks, Young Men's Christian Associations, Young Women's Christian Associations, societies for the care of orphan and indigent children, societies for the rescue of fallen women, and any other benevolent or fraternal orders and societies, may appoint from time to time suitable persons trustees of their bodies or societies, in such manner as they deem proper, which trustees, and their successors, shall have power to receive, purchase, take, and hold property, real and personal, in trust for such society or body. The trustees shall have power, when instructed so to do by resolution adopted by the society or body which they represent, to sell and convey in fee simple any real or personal property owned by the society or body; and the conveyances so made by the trustees shall be effective to pass the property in fee simple to the purchaser. If there shall be no trustee, then any real or personal property which could be held by such trustees shall vest in and be held by such charitable, benevolent, religious, or fraternal orders and societies, respectively, according to such intent. This shall not affect vested rights nor apply to suits pending on the ninth day of March, one thousand nine hundred and fifteen.

C. S., s. 6536; 1907, c. 22; 1915, cc. 149, 186.

CHAPTER XII.

MUNICIPAL CORPORATIONS.

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This chapter relates to the organization of municipal corporations and to municipal finance.

SUBCHAPTER I. ORGANIZATION.

845. Municipal board of control. The municipal board of control shall be composed of the secretary of state, the attorney-general, and the chairman of the corporation commission. The attorney-general shall be chairman and the secretary of state shall be secretary of such board.

C. S., s. 2779; 1917, c. 136, sub-ch. 2, s. 4; 1919, c. 262.

846. Number of persons and area included. Any number of persons, not less than fifty, at least twenty-five of whom shall be freeholders or homesteaders, and twenty-five qualified voters living in the area proposed to be incorporated, which area shall have an assessed valuation of real property of at least twenty-five thousand dollars according to the last preceding assessment for taxes, and shall not be a part of the area included in the limits of any city, town, or incorporated village already or hereafter existing, may be organized into a town upon compliance with the method herein set forth.

C. S., s. 2780; 1917, c. 136, sub-ch. 2, s. 1.

847. Petition filed:

1. *What petition must show.* A petition signed by a majority of the resident qualified electors and a majority of the resident freeholders or homesteaders of the territory proposed to be so organized shall be presented to the secretary of state of North Carolina, accurately describing such territory, with map attached, containing the names of all qualified voters therein, the assessed

valuation of such territory, and the proposed name of the new town. The petition shall further be signed by at least twenty-five resident freeholders or homesteaders of the age of twenty-one years or over, at least twenty of whom are qualified voters; and further, the petition shall show the valuation of the real property of the proposed town to be at least twenty-five thousand dollars, according to the last preceding tax assessment; and the petition shall be verified by at least three of the signers who are qualified voters.

2. *Order and notice for hearing.* The secretary of state shall thereupon make an order prescribing the time and place for the hearing of said petition before the municipal board of control. At least thirty days before the hearing, notice of such hearing shall be published once a week for four weeks in a newspaper published in the county where such territory is situate, designated as most likely to give notice to the people of the territory proposed to be so organized or incorporated into a town; or, if no newspaper is so published, then in some newspaper of general circulation in such proposed city, town, or incorporated village; and such notice shall also be posted at the county courthouse door of such county for a like period. Such notice shall be signed by at least three of the freeholders signing the petition for the organization of the town.

C. S., s. 2781; 1917, c. 136, sub-ch. 2, s. 2.

848. Hearing of petition and order made:

1. *Manner of hearing.* Any qualified voter or taxpayer of such territory proposed to be incorporated into a town may appear at the hearing of such petition, and the matter shall be tried as an issue of fact by the municipal board of control, and no formal answer to the petition need be filed. The board may adjourn the hearing from time to time, in its discretion.

2. *Order creating corporation.* The municipal board of control shall file its findings of fact at the close of such hearing, and if it shall appear that the allegations of the petition are true, and that all the requirements in this article have been substantially complied with, and that the organization of such city, town, or incorporated village will better subserve the interests of said persons and the public, the board shall enter an order creating such territory into a town, giving it the name proposed in the petition.

3. *Election of officers provided for.* The board of control shall provide for the place of holding the first election for mayor and

commissioners; and shall designate how many commissioners shall serve, as set forth in subchapter I of this chapter, naming the number of commissioners, not less than three nor more than seven. The election of mayor and commissioners shall be under the same laws as now govern the election of mayor and commissioners in subchapter I of this chapter.

4. *Filing papers; fees.* All the papers in reference to the organization of any town under this article shall be filed and recorded in the office of the secretary of state, and certified copies thereof shall be filed and recorded in the office of the clerk of the superior court of the county in which the town organized is situated. The fees shall be the same as are now provided for the organization of private corporations and shall be paid out of the treasury of the city, town, or incorporated village.

5. *When organization complete.* Upon the approval of the board of control and the recording of the papers in the offices above mentioned, the said town shall become a municipal corporation with all the powers and subject to all the laws governing towns as set forth in subchapter I of this chapter and as in this act set forth.

C. S., s. 2782; 1917, c. 136, sub. 2, s. 3.

SUBCHAPTER II. MUNICIPAL FINANCE.

ART. 1. GENERAL PROVISIONS.

849. Short title. This act may be cited as "The Municipal Finance Act, 1921."

Ex. Session 1921, c. 106.

850. Meaning of terms. In this act, unless the context otherwise requires, the expressions:

"Bond ordinance" means an ordinance authorizing the issuance of bonds of a municipality;

"Clerk" means the person occupying the position of clerk or secretary of a municipality;

"Financial officer" means the chief financial officer of a municipality;

"Funding bonds" means bonds issued to pay or extend the time of payment of debts incurred before December sixth, one thousand nine hundred and twenty-one, not evidenced by bonds;

"Governing body" means the board or body in which the general legislative powers of a municipality are vested;

"Local improvement" means any improvements of property

the cost of which has been or is to be specially assessed in whole or in part;

"Municipality" means and includes any city, town, or incorporated village in this State, now or hereafter incorporated;

"Necessary expenses" means the necessary expenses referred to in section seven of article seven of the Constitution of North Carolina;

"Publication" includes posting in cases where posting is authorized by this act as a substitute for publication in a newspaper;

"Refunding bonds" means bonds issued to pay or extend the time of payment of debts incurred before March seventh, one thousand nine hundred and seventeen, evidenced by bonds;

"Special assessments" means special assessments for local improvements, levied on abutting property or other property specially benefited, or on street railroad companies or other companies or individuals having tracks in streets or highways, and "especially assessed" has a corresponding meaning.

Ex. Session 1921, c. 106.

851. Publication of ordinance and notices. An ordinance or notice required by this act to be published by a municipality shall be published in a newspaper published in the municipality, or, if no newspaper is published therein, in a newspaper published in the county and circulating in the municipality, or, if there is no such newspaper, the ordinance or notice shall be posted at the door of the building in which the governing body usually holds its meetings and at three other public places in the municipality.

Ex. Session 1921, c. 106.

852. Application and construction of act. This act shall apply to all municipalities. Every provision of this act shall be construed as being qualified by constitutional provisions, whenever such construction shall be necessary in order to sustain the constitutionality of any portion of this act. If any portion of this act shall be declared unconstitutional, the remainder shall stand, and the portion declared unconstitutional shall be excised.

Ex. Session 1921, c. 106.

ART. 2. BUDGET AND APPROPRIATIONS.

853. The fiscal year. The fiscal year of every municipality shall begin either on the first day of June or on the first day of September, as the governing body of the municipality may determine.

Ex. Session 1921, c. 106.

854. Budget prepared. Not earlier than one month before, nor later than one month after the beginning of each fiscal year of a municipality, the governing body shall cause to be prepared a plan for financing the municipality during said fiscal year, which plan shall be known as the budget and shall be based upon detailed estimates furnished by the several departments and other divisions of the municipal government.

Ex. Session 1921, c. 106.

855. What budget shall contain. The budget shall present the following information:

1. An itemized estimate of the appropriations necessary to be made for the current expenses and for permanent improvements for each department and division of the municipal government for the fiscal year (exclusive of expense to be paid for by means of bonds issued under article twenty-six of this chapter), for the payment of the principal and interest of debts and for deficits of the previous fiscal year, with comparative statements in parallel columns of expenditures for corresponding items so far as possible for the two preceding fiscal years. This estimate may include a contingent fund not designated for any particular purpose not exceeding five per centum of the total estimated amount of other appropriations.

2. An itemized estimate of the taxes required and of the estimated revenues of the municipality from all other sources for the fiscal year, the unencumbered balances of the appropriations, and of the surplus revenues of the previous fiscal year, with comparative statements in parallel columns of the taxes and other revenues for the two preceding fiscal years.

3. A statement of the financial condition of the municipality, and such other information as the governing body may deem advisable to state.

Ex. Session 1921, c. 106.

856. Copy of budget filed for inspection. A copy of the budget shall be filed in the office of the clerk of the municipality for public inspection not later than ten days before its adoption by the governing body, and a public hearing shall be given thereon by the governing body before the adoption of the budget, notice of which hearing shall be published.

Ex. Session 1921, c. 106.

857. Change of fiscal year. The fiscal year may be changed by resolution of the governing body, which resolution shall declare that the fiscal year shall thereafter begin on the first day of

September or June, as the case may be. A budget and appropriation ordinance shall be adopted for a period commencing at the expiration of the current fiscal year, in which such resolution is passed, and ending at the end of the next succeeding new fiscal year. Such a budget shall be adopted within the month preceding or the month following the beginning of such period.

Ex. Session 1921, c. 106.

858. Annual appropriation ordinance. Not later than one month after the beginning of the fiscal year, the governing body shall pass the annual appropriation ordinance for the fiscal year, which shall be based on the budget. The total amount of approximations shall not exceed the total of the estimated revenue, unencumbered balances and surplus receipts.

Ex. Session 1921, c. 106.

859. Appropriations made before annual ordinance. In the interval between the beginning of a fiscal year and the adoption of the annual appropriation ordinance the governing body may make appropriations for the purpose of paying fixed salaries, the principal and interest of bonded debts and other loans, the stated compensation of officers and employees and indebtedness for work performed or materials furnished under contracts made before the beginning of the fiscal year, or for the ordinary expenses of the municipality, which appropriations shall be chargeable to the appropriations in the annual appropriation ordinances for that year.

Ex. Session 1921, c. 106.

860. Amendment of appropriations. At any time after the passage of the annual appropriation ordinance, the governing body may amend such ordinance so as to authorize the transfer of balances appropriated for one purpose to another purpose, or to appropriate available revenues not included in the annual budget.

The amendatory ordinance, unless it be for the appropriation of available revenues not included in the annual budget, shall be published one or more times at least one week before its final passage, with notice of the time when and place where it will be finally passed: Provided, however, that such ordinance may be passed during the last three months of a fiscal year, without any previous publication or notice.

Ex. Session 1921, c. 106.

861. Balances revert for future appropriations. At the close of each fiscal year the unencumbered balance of each appropriation shall revert to the general fund, and shall be subject to future appropriation.

Ex. Session 1921, c. 106.

862. Funds specially applied not affected. Nothing herein shall be construed to permit revenues which by statute are appropriated to a particular purpose to be appropriated to any other purpose, but such revenue shall nevertheless be included in the budget.

Ex. Session 1921, c. 106.

ART. 3. TEMPORARY LOANS.

863. Money borrowed to meet appropriations. A municipality may borrow money for the purpose of meeting appropriations made for the current fiscal year, in anticipation of the collection of the taxes and revenues of such fiscal year, and within the amount of such appropriations. Such loans shall be paid not later than the tenth day of October in the next succeeding fiscal year. Provision shall be made in the annual budget and annual appropriation ordinance of each fiscal year for the payment of all unpaid loans predicated upon the taxes and revenues of the previous fiscal year.

Ex. Session 1921, c. 106.

864. Money borrowed to pay judgments or interest. For the purpose of paying a judgment recovered against a municipality, or paying the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, a municipality may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the money is borrowed or the revenues of the next succeeding fiscal year. Such loans shall be paid not later than the end of such next succeeding fiscal year. In the event, however, that a judgment or judgments against a municipality amount to more than one cent per hundred dollars of the assessed valuation of taxable property of the municipality for the year in which taxes were last levied before the recovery of the judgment, a loan to pay the judgment may be made payable in not more than five substantially equal annual installments, beginning within one year after the loan is made.

Ex. Session 1921, c. 106.

865. Money borrowed in anticipation of bond sales. At any time after a bond ordinance has taken effect as provided in article twenty-six herein, a municipality may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than three years after the time of taking effect of the ordinance authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues, special assessments, or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, before the actual retirement of any such loan by any means other than the issuance of bonds, under the bond ordinance upon which such loan is predicated, shall amend or repeal such ordinance so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing ordinance shall take effect upon its passage and need not be published.

Ex. Session 1921, c. 106.

866. Notes issued for temporary loans. Negotiable notes shall be issued for all moneys borrowed under the last two sections. Such notes may be renewed from time to time and money may be borrowed upon notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature within the time limited by said sections for the payment of the original loan. No money shall be borrowed under said sections at a rate of interest exceeding the maximum rate permitted by law. The said notes may be disposed of by public or private negotiations. The issuance of such notes shall be authorized by resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix said face amount, and rate of interest within the limitations prescribed by said resolution, and the power to dispose of said notes. All such notes shall be executed in the manner provided in section two thousand nine hundred and fifty-four of this subchapter (herein 833) in relation to bonds. They shall be submitted to and approved by the attorney for the municipality before they are issued, and his written approval indorsed on the notes.

Ex. Session 1921, c. 106.

ART. 4. PERMANENT FINANCING.

867. Not applied to temporary loans. The provisions of this article shall not apply to temporary loans made under article twenty-five, unless otherwise provided in said article.

Ex. Session 1921, c. 106.

868. For what purposes bonds may be issued. A municipality may issue its negotiable bonds for any one or more of the following purposes:

1. For any purpose or purposes for which it may raise or appropriate money, except for current expenses.

2. To fund or refund a debt of the municipality incurred before December fifth, nineteen hundred and twenty-one, if such debt be payable at the time of the passage of the ordinance authorizing bonds to fund or refund such debt or be payable within one year thereafter, or if such debt, although payable more than one year thereafter, is to be canceled prior to its maturity and simultaneously with the issuance of the bonds to fund or refund such debt: Provided, however, that bonds shall not be issued to refund serial bonds which mature in installments as provided in section two thousand nine hundred and fifty-two (herein 881).

Ex. Session 1921, c. 106.

869. Ordinance for bond issue:

1. *Ordinance required.* All bonds of a municipality shall be authorized by an ordinance passed by the governing body.

2. *What ordinance must show.* The ordinance shall state:

- a. In brief and general terms the purpose for which the bonds are to be issued;

- b. The maximum aggregate principal amount of the bonds;

- c. That a tax sufficient to pay the principal and interest of the bonds shall be annually levied and collected;

- d. That a statement of the debt of the municipality has been filed with the clerk and is open to public inspection.

- e. One of the following provisions:

- (1) If the bonds are funding or refunding bonds or for local improvements of which at least one-fourth of the cost, exclusive of the cost of paving at street intersections, has been or is to be specially assessed, that the ordinance shall take effect upon its passage, and shall not be submitted to the voters; or

- (2) If the bonds are for a purpose other than the payment of necessary expenses, or if the governing body, although not re-

quired to obtain the assent of the voters before issuing the bonds, deems it advisable to obtain such assent, that the ordinance shall take effect when approved by the voters of the municipality at an election as provided in this act; or

(3) In any other case, that the ordinance shall take effect thirty days after its first publication (or posting) unless in the meantime a petition for its submission to the voters is filed under this act, and that in such event it shall take effect when approved by the voters of the municipality at an election as provided in this act.

3. *When the ordinance takes effect.* A bond ordinance shall take effect at the time and upon the conditions indicated therein. If the ordinance provides that it shall take effect upon its passage no vote of the people shall be necessary for the issuance of the bonds.

4. *Need not specify location of improvement.* In stating the purpose of a bond issue, a bond ordinance need not specify the location of any improvement or property, or the kind of pavement or other material to be used in the construction or reconstruction of streets, highways, sidewalks, curbs, or gutters, or the kind of construction or reconstruction to be adopted for any building, for which the bonds are to be issued. A description in a bond ordinance of a property or improvement, substantially in the language employed in section two thousand nine hundred and forty-two of this subchapter (herein 872) to describe such a property or improvement, shall be a sufficiently definite statement of the purpose for which the bonds authorized by the ordinance are to be issued.

Ex. Session 1921, c. 106.

870. Ordinance not to include unrelated purposes. Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same ordinance: Provided, however, that bonds for two or more improvements or properties mentioned together in any one clause of subsection four of section two thousand nine hundred and forty-two of this subchapter (herein 872) may be treated as being but for one purpose, and may be authorized by the same bond ordinance. After two or more bond ordinances have been passed, the governing body may, in its discretion, direct all or any of the bonds authorized by the ordinances to be actually issued as one consolidated bond issue.

Ex. Session 1921, c. 106.

871. Ordinance and bond issue; when petition required. In cases where a petition of property owners is required by law for the making of local improvements, a bond ordinance authorizing bonds for such local improvements may be passed before any such petition is made, but no bonds for the local improvements in respect of which such petitions are required shall be issued under the ordinance, nor shall any temporary loan be contracted in anticipation of the issuance of such bonds, unless and until such petitions are made, and then only up to the actual or estimated amount of the cost of the work petitioned for. The determination of the governing body as to the actual or estimated cost of work so petitioned for shall be conclusive in any action involving the validity of bonds or notes or other indebtedness. The bond ordinance may be made to take effect upon its passage, notwithstanding that the necessary petitions for the local improvements have not been filed: Provided, that it appears upon the face of the ordinance that one-fourth or some greater proportion of the cost, exclusive of the cost of work at street intersections, has been or is to be assessed.

Ex. Session 1921, c. 106.

872. Determining periods for bonds to run:

1. *How periods estimated.* Either in the bond ordinance or in a resolution passed after the bond ordinance but before any bonds are issued thereunder, the governing body shall, within the limits prescribed by subsection four of this section, determine and declare:

a. The probable period of usefulness of the improvements or properties for which the bonds are to be issued; or

b. If the bonds are to be funding or refunding bonds, either the shortest period in which the debt to be funded or refunded can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, or, at the option of the governing body, the probable unexpired period of usefulness of the improvement or property for which the debt was incurred.

2. In the case of a consolidated bond issue comprising bonds authorized by different ordinances for different purposes, and in the case of a bond issue authorized by but one ordinance for several related purposes in respect of which several different periods are determined as aforesaid, the governing body shall also determine the average of the different periods so determined, taking into consideration the amount of bonds to be issued on account of each purpose or item in respect of which a period is determined.

The period required to be determined as aforesaid shall be computed from a date not more than one year after the time of passage of any bond ordinance authorizing the issuance of the bonds. The determination of any such period by the governing body shall be conclusive.

3. *Maturity of bonds.* The bonds must mature within the period determined as aforesaid, or, if several different periods are so determined, then within said average period.

4. *Periods of usefulness.* In determining, for the purpose of this section, the probable period of the usefulness of an improvement or property, the governing body shall not deem said period to exceed the following periods for the following improvements and properties, respectively, viz.:

a. Sewer systems (either sanitary or surface drainage), forty years.

b. Water supply systems, or combined water and electric light systems, or combined water, electric light, and power systems, forty years.

c. Gas systems, thirty years.

d. Electric light and power systems, separate or combined, thirty years.

e. Plants for the incineration or disposal of ashes, or garbage, or refuse (other than sewerage), twenty years.

f. Public parks (including or not including a playground, as a part thereof, and any buildings thereon at the time of acquisition thereof, or to be erected thereon, with the proceeds of the bonds issued for such public parks), fifty years.

g. Playgrounds, fifty years.

h. Buildings for purposes not stated in this section, if they are:

(1) Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, floorings, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is wooden flooring on top of the fireproof floor, and that wooden sleepers are used, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years.

(2) Of nonfireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years.

(3) Of other construction, twenty years.

i. Bridges and culverts (including retaining walls and approaches), forty years, unless constructed of wood, and in that case, ten years.

j. Lands for purposes not stated in this section, fifty years.

k. Constructing or reconstructing the surface of roads, streets, or highways, whether including or not including contemporaneous constructing or reconstructing of sidewalks, curbs, gutters, or drains, and whether including or not including grading, if such surface:

(1) Is constructed of sand and gravel, five years.

(2) Is of waterbound macadam or penetration process, ten years.

(3) Is of brick, blocks, sheet asphalt, bitulithic, or bituminous concrete, laid on a solid foundation, or is of concrete, twenty years.

l. Land for roads, streets, highways, or sidewalks, or grading, or constructing or reconstructing culverts, or retaining walls or surface, or subsurface drains, fifty years.

m. Constructing sidewalks, curbs, or gutters of brick, stone, concrete, or other material of similar lasting character, twenty years.

n. Installing fire or police alarms, telegraph or telephone service, or other system of communication for municipal use, thirty years.

o. Fire engines, fire trucks, hose carts, ambulances, patrol wagons, or any vehicles for use in any department of the municipality, or for the use of municipal officials, ten years.

p. Land for cemeteries, or the improvement thereof, thirty years.

q. Constructing sewer, water, gas, or other service connections, from the service main in the street to the curb or property line, when the work is done by the municipality in connection with any permanent improvement of or in any street, ten years.

r. The elimination of any grade crossing or crossings and improvements incident thereto, thirty years.

s. Equipment, apparatus, or furnishings not included in the foregoing clauses of this subsection, ten years.

t. Any improvement or property not included in other clauses of this subsection, forty years.

5. *Improvements and properties defined.* The maximum periods fixed herein for the improvements and properties mentioned in clauses number from *a.* to *i.*, both inclusive, of subsection 4 of this section shall be applied thereto whether such improvements or properties are to be acquired, constructed, reconstructed, enlarged, or extended, in whole or in part, and whether the same are to include or not to include buildings, lands, rights in lands, furnishings, equipment, machinery, or apparatus constituting a part of said improvements or properties at the time of acquisition, construction, or reconstruction. If the improvements of properties are to be an enlargement or extension of existing properties or improvements, the probable period of usefulness to be determined as aforesaid may be either that of the existing properties or improvements; or that of the enlargement or extension. Bonds for any or all improvements or properties included in any one clause of subsection 4 above may for the purposes of this section be deemed by the governing body to be for but one improvement or property.

6. *Kind of construction determined.* If the bonds are for a building referred to in clause *h*, of subsection 4 above, and the bond ordinance does not state the kind of construction of the building, or if the bonds are for street improvements mentioned in clause *k*, of subsection 4 above, and the bond ordinance does not state the kind or kinds of pavement or other material to be used, then the kind of construction, or the kind or kinds of pavement or other material as the case may be shall be determined by resolution before any of the bonds are issued.

7. *Shortest period of payment.* In determining, for the purpose of this section, the shortest period in which a debt to be funded or refunded hereunder can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, the governing body shall not deem said period to be greater than the following periods in the following cases, respectively:

a. Thirty years, if funding bonds are to be issued.

b. Thirty years, if refunding bonds are to be issued, and the net debt of the municipality, as stated in the debt statement filed pursuant to section two thousand nine hundred and forty-three (herein 873), is not more than four per centum of the assessed valuation set forth in said statement.

c. Forty years, if refunding bonds are to be issued, and said net debt is more than four but not more than five per centum of said assessed valuation.

d. Fifty years, if refunding bonds are to be issued, and said net debt is more than five per centum of said assessed valuation.

Ex. Session 1921, c. 106.

873. Sworn statement of indebtedness:

1. *What shall be shown.* After the introduction and before the final passage of a bond ordinance an officer designated by the governing body for that purpose shall file with the clerk a statement showing the following:

(a) The gross debt (which shall not include debt incurred or to be incurred in anticipation of the collection of taxes or in anticipation of the sale of bonds other than funding and refunding bonds), which gross debt shall be as follows:

(1) Outstanding debt incurred before December sixth, one thousand nine hundred and twenty-one, not evidenced by bonds.

(2) Outstanding bonded debts.

(3) Bonded debt to be incurred under ordinances passed or introduced.

(b) The deductions to be made from gross debt in computing net debt, which deductions shall be as follows:

(1) Amount of unissued funding or refunding bonds included in gross debt.

(2) Amount of sinking funds or other funds held for the payment of any part of the gross debt other than debt incurred for water, gas, electric light, or power purposes or two or more of said purposes.

(3) The amount of uncollected special assessments theretofore levied on account of local improvements for which any part of the gross debt was or is to be incurred which will be applied when collected to the payment of any part of the gross debt.

(4) The amount, as estimated by the engineer of the municipality or officer designated for that purpose by the governing body or by the governing body itself, of special assessments to be levied on account of local improvements for which any part of the gross debt was or is to be incurred, and which, when collected will be applied to the payment of any part of the gross debt.

(5) The amount of bonded debt included in the gross debt and incurred, or to be incurred, for water, gas, electric light or power purposes, or two or more of said purposes.

(c) The net debt, being the difference between the gross debt and the deductions.

(d) The assessed valuation of property as last fixed for municipal taxation.

(e) The percentage that the net debt bears to said assessed valuation.

2. *Limitations upon passage of ordinance.* The ordinance shall not be passed unless it appears from said statement that the said net debt does not exceed eight (8) per cent of said assessed valuation, unless the bonds to be issued under the ordinance are to be funding or refunding bonds, or are bonds for water, gas, electric light or power purposes, or two or more of said purposes.

3. *Statement filed for inspection.* Such statements shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds said statement shall be deemed to be true and to comply with the provisions of this act, unless it appears (in an action or proceeding commenced within the time limited by section 2945 (herein 875) for the commencement thereof), first, that the representations contained therein could not by any reasonable method of computation be true; and second, that a true statement would show that the ordinance authorizing the bonds could not be passed.

Ex. Session 1921, c. 106.

874. Publication of bond ordinance. A bond ordinance shall be published once in each of two successive weeks after its final passage. A notice substantially in the following form (the blanks being first properly filled in), with the printed or written signature of the clerk appended thereto, shall be published with the ordinance:

The foregoing ordinance was passed on the----day of-----, 19----, and was first published (or posted), on the----day of-----, 19-----.

Any action or proceeding questioning the validity of said ordinance must be commenced within thirty days after its first publication (or posting).

-----,
Clerk (or Secretary).

Ex. Session 1921, c. 106.

875. Limitation of action to set aside ordinance. Any action or proceeding in any court to set aside a bond ordinance, or to obtain any other relief upon the ground that the ordinance is invalid, must be commenced within thirty days after the first publication of the notice aforesaid and the ordinance or supposed ordinance referred to in the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the ordinance shall be asserted, nor shall the validity of the ordinance be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

Ex. Session 1921, c. 106.

876. Ordinance requiring popular vote:

1. *Petition filed.* A petition demanding that a bond ordinance be submitted to the voters may be filed with the clerk within thirty days after the first publication of the ordinance. The petition shall be in writing and signed by voters of the municipality equal in number to at least twenty-five per centum of the total number of registered voters in the municipality as shown by the registration books for the last preceding election for municipal officers therein. The residence address of each signer shall be written after his signature. Each signature to the petition shall be verified by a statement (which may relate to a specified number of signatures), made by some adult resident freeholder of the municipality under oath before an officer competent to administer oaths, to the effect that the signature was made in his presence and is the genuine signature of the person whose name it purports to be. The petition need not contain the text of the ordinance to which it refers. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet.

2. *Sufficiency of petition.* The clerk shall investigate the sufficiency of the petition and present it to the governing body with a certificate stating the result of his investigation. The governing body shall thereupon determine the sufficiency of the petition and the determination of the governing body shall be conclusive.

Ex. Session 1921, c. 106.

877. Elections on bond issue:

1. *What majority required.* If a bond ordinance provides for the issuance of bonds for a purpose other than the payment of

necessary expenses of the municipality, the approval of a majority of the qualified voters of the municipality, as required by the Constitution of North Carolina, shall be necessary in order to make the ordinance operative. If, however, the bonds are to be issued for necessary expenses, the affirmative vote of the majority of the voters voting on the bond ordinance shall be sufficient to make it operative, in all cases where the ordinance is required by this act to be submitted to the voters.

2. *When election held.* Whenever the taking effect of an ordinance authorizing the issuance of bonds is dependent upon the approval of the ordinance by the voters of a municipality, the governing body may submit the ordinance to the voters at an election to be held not more than six months after the passage of the ordinance. The governing body may call a special election for that purpose or may submit the ordinance to the voters at the regular municipal election next succeeding the passage of the ordinance, but no such special election shall be held within one month before or after a regular election. Several ordinances or other matters may be voted upon at the same election.

3. *New registration.* The governing body of the city or town in which such election is held may, in their discretion, order a new registration of the voters for such election. The books for such new registration shall remain open in each precinct from nine a. m. to six p. m. on each day, except Sundays and holidays, for three weeks, beginning on a Monday morning and ending on the second Saturday evening before the election. A registrar and two judges of election shall be appointed by the governing body for each precinct: Provided, that the books shall be open at the polling places on each Saturday during the registration period. Sufficient notice shall be deemed to have been given of such new registration and of the appointment of the election officers if a notice thereof be published at least thirty (30) days before the closing of the registration books, stating the hours and days for registration. It shall not be necessary to specify in said notice the places for registration. In case the registrar shall fail or refuse for any cause to perform his duties, it shall be lawful for the clerk to appoint another person to perform such duties, and no notice of such appointment shall be necessary.

4. *Notice of election.* A notice of the election shall be deemed sufficiently published if published once not later than twenty days before the election. Such notice shall state the maximum amount of the proposed bonds and the purpose thereof, and the fact that

a tax will be levied for the payment thereof. The date of the election shall be stated therein.

5. *Ballots.* A ballot or ballots shall be furnished to each qualified voter at said election, which ballots may contain the words "for the ordinance authorizing \$-----bonds (briefly stating the purpose), and a tax therefor," and "against the ordinance authorizing \$-----bonds (briefly stating the purpose), and a tax therefor," and if one ballot contains the two alternatives it may contain squares in one of which the voter may make a (X) mark, but this form of ballot is not prescribed.

6. *Returns canvassed.* The officers appointed to hold the election, in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each ordinance submitted, but also the number of voters registered and qualified to vote in the election. The governing body shall canvass the returns, and shall include in their canvass the votes cast and the number of voters registered and qualified to vote in the election, and shall judicially determine and declare the result of the election.

7. *Application of other laws.* Except as herein otherwise provided, the registration and election shall be conducted in accordance with the laws then governing elections for municipal officers in such municipality, and governing the registration of the electors for such election of officers.

8. *Statement of result.* The board shall prepare a statement showing the number of votes cast for and against each ordinance submitted, and the number of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the board and delivered to the clerk of the municipality, who shall record it in the book of ordinances of the municipality and file the original in his office and publish it once.

9. *Limitation as to actions.* No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement: Provided, that sections 2947 and 2948 (herein 876 and 877) shall not apply to the incorporated towns of Madison County.

Ex. Session 1921, c. 106.

878. Preparation for issuing bonds. At any time after the passage of a bond ordinance, all steps preliminary to the actual

issuance of bonds under the ordinance may be taken, but the bonds shall not be actually issued unless and until the ordinance takes effect.

Ex. Session 1921, c. 106.

879. Within what time bonds issued. After a bond ordinance takes effect, bonds may be issued in conformity with its provisions at any time within three years after the ordinance takes effect, unless the ordinance shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of appeal), unless notes shall have been issued on anticipation of the receipts of the proceeds of the bonds and shall be outstanding.

Ex. Session 1921, c. 106.

880. Amount and nature of bonds determined. The aggregate amount of bonds to be issued under a bond ordinance, the rate or rates of interest they shall bear, not exceeding six per centum per annum, payable semiannually, and the times and place or places of payment of the principal and interest of the bonds, shall be fixed by resolution or resolutions of the governing body. The bonds may be issued either all at one time or from time to time in blocks, and different provisions may be made for different blocks.

Ex. Session 1921, c. 106.

881. Bonded debt payable in installments. Each bond issue made under this act shall mature in annual installments or series, the first of which shall be made payable not more than three years after the date of the first issued bonds of such issue, and the last within the period determined and declared pursuant to section two thousand nine hundred and forty-two of this subchapter (herein 872). No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all of the bonds of an issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid.

Ex. Session 1921, c. 106.

882. Medium and place of payment. The bonds may be made payable in such kinds of money and at such place or places within or without the State of North Carolina as the governing body may by resolution provide.

Ex. Session 1921, c. 106.

883. Formal execution of bonds. The bonds shall be issued in such form as the officers who execute them shall adopt, except as otherwise provided by the governing body. They shall be signed by two or more officers designated by the governing body, or, if the governing body makes no such designation, then by the mayor or other chief executive officer and by the clerk, and the corporate seal of the municipality shall be affixed to the bonds. The bonds may have coupons attached for the interest to be paid thereon, which coupons shall bear a facsimile signature of the clerk in office, at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid notwithstanding any change in the officers or in the seal of the municipality occurring after the signing and sealing of the bonds.

Ex. Session 1921, c. 106.

884. Registration and transfer of bonds:

1. *Bonds payable to bearer.* Bonds issued under this act shall be payable to the bearer unless they are registered as provided in this section; and each coupon appertaining to a bond shall be payable to the bearer of the coupon.

2. *Registration and effect.* A municipality may keep in the office of its financial officer or in the office of a bank or trust company appointed by the governing body as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue, or, at the request of the holder, thereafter. After such registration the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registry by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner.

3. *Registration and transfer noted on bond.* Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. Upon the registration of a coupon bond as to both principal and interest he shall also cut and cancel the coupons.

4. *Agreement for registration.* A municipality may, by recital in its bonds, agree to register the bonds as to principal only, or

agree to register them either as to principal only or as to both principal and interest at the option of the bondholder.

Ex. Session 1921, c. 106.

885. Sale of bonds. All bonds of a municipality shall be sold at not less than par. They shall be advertised and sold upon sealed proposals, or at public auction, unless the sale is made within thirty days after failure to receive any legally acceptable bid in response to a public offering made as provided in this section.

Whenever bonds are to be sold pursuant to advertisement, there shall be published at least once a notice containing a description of the bonds to be sold, the place of sale, and the time of sale, or time limited for the receipt of proposals, which shall be not less than ten days after the first publication of the notice. The notice shall state that bidders must present with their bids a certified check upon an incorporated bank or trust company, payable to the order of the municipality or of an executive, financial or clerical officer thereof, or a sum of money for or in an amount equal to two (2) per centum of the face amount of bonds bid for to secure the municipality against any loss resulting from a failure of the bidder to comply with the terms of his bid. The said notice shall be published not only in the manner prescribed by section two thousand nine hundred and twenty (herein 851), but also at least ten days before the expiration of the time limited for the receipt of bids, in a financial paper or trade journal published within the State of North Carolina, which publishes from time to time notices of the sale of municipal bonds; and the determination of the governing body that the paper or journal named for said publication is such financial paper or trade journal, and that it publishes from time to time notices of the sale of municipal bonds shall be conclusive.

Proposals submitted pursuant to such notices shall be opened in public and the bonds shall be awarded to the highest bidder, unless all bids are rejected. The governing body may delegate the power to sell bonds to a committee thereof, or any two officers, but every private sale of bonds shall be made or confirmed by the governing body. Bonds of the municipality sold out of a sinking fund of a municipality shall be sold as provided in this section, except that such bonds may be sold for less than par.

Nothing herein shall prevent a municipality from awarding its bonds to the bidder offering to take them at the lowest rate of interest, provided the notice of sale invites bidders to name rate of interest which the bonds are to bear.

Ex. Session 1921, c. 106.

886. Application of funds. The proceeds of the sale of bonds under this act shall be used only for the purposes specified in the ordinance authorizing said bonds, and for the payment of the principal and interest of temporary loans made in anticipation of the sale of bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued.

Ex. Session 1921, c. 106.

887. Bonds incontestable after delivery. Any bonds reciting that they are issued pursuant to this act shall in any action or proceeding involving their validity be conclusively deemed to be fully authorized by this act, and to have been issued, sold, executed, and delivered in conformity herewith, and with all other provisions of statutes applicable thereto, and shall be incontestable, anything herein or in other statutes to the contrary notwithstanding, unless such action or proceeding is begun prior to the delivery of such bonds.

Ex. Session 1921, c. 106.

888. Taxes levied for payment of bonds. The full faith and credit of the municipality shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this act, including assessment bonds or other bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the municipality sufficient to pay the principal and interest of all bonds issued under this act as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose.

So much of the net revenue derived by the municipality in any fiscal year from the operation of any revenue producing enterprise owned by the municipality after paying all expenses of operating, managing, maintaining, repairing, enlarging, and extending such enterprise, shall be applied, first to the payment of the interest, payable in the next succeeding year on bonds issued for such enterprise, and next, to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of said bonds. All money derived from the

collection of special assessments for local improvements for which bonds or notes were issued shall be placed in a special fund and used only for the payment of bonds or notes issued for the same or other local improvements.

Every municipality shall have the power to levy taxes *ad valorem* upon all taxable property therein for the purpose of paying the principal of or the interest on any bonds or notes for the payment of which the municipality is liable, issued under any act other than this act, or for the purpose of providing a sinking fund for the payment of said principal, or for the purpose of paying the principal of or interest on any notes issued under this act.

The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a municipality may levy. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the municipality.

Ex. Session 1921, c. 106.

ART. 5. RESTRICTIONS UPON THE EXERCISE OF MUNICIPAL POWERS.

889. In borrowing or expending money:

1. No municipality shall:

a. Make an appropriation of money except as provided in this act;

b. Borrow money or issue bonds or notes except as provided in this act;

c. Make an expenditure of money unless the money shall have been appropriated as provided in this act, or unless the expenditure is a payment of a judgment against the municipality or is a payment of the principal or interest of a bond or note of the municipality; or,

d. Enter into any contract involving the expenditure of money unless a sufficient appropriation shall have been made therefor, except a continuing contract to be performed in whole or in part in an ensuing fiscal year, in which case an appropriation shall be made sufficient to meet the amount to be paid in the fiscal year in which the contract is made.

2. The authorization of bonds by a municipality shall be deemed to be an appropriation of the maximum authorized

amount of the bonds for the purposes for which they are to be issued.

Ex. Session 1921, c.

890. Manner of passing ordinances and resolutions. Ordinances and resolutions passed pursuant to this act shall be passed in the manner provided by other laws for the passage of ordinances and resolutions, but shall not be subject to the provisions of other laws prescribing conditions, acts, or things necessary to exist, happen, or be performed precedent to or after the passage of ordinances or resolutions in order to give them full force and effect: Provided, however, that in any municipality in which the acts of the governing body thereof involving the raising or expenditure of money are required by law to be approved by some other official board or officer of the municipality in order to make them effective, all ordinances and resolutions passed by the governing body under this act shall, unless they relate solely to elections held under this act, be so approved before they take effect.

Ex. Session 1921, c. 106.

891. Enforcement of act. If any board or officer of a municipality shall be ordered by a court of competent jurisdiction to levy or collect a tax to pay a judgment or other debt, or to perform any duty required by this act to be performed by such board or officer, and shall fail to carry out such order, the court, in addition to all other remedies, may appoint its own officers or other persons to carry out such order.

Ex. Session 1921, c. 106.

892. Limitation of tax for general purposes. For the purpose of raising revenue for defraying the expenses incident to the proper government of the municipality, the governing body shall have the power and it is hereby authorized to levy and collect an annual ad valorem tax on all taxable property in the municipality at a rate not exceeding one dollar on the one hundred dollars valuation of said property, notwithstanding any other law, general or special, heretofore or hereafter enacted, except a law hereafter enacted expressly repealing or amending this section: Provided, that in cities where the taxable values for the year 1920 amounted to one hundred million dollars or more, the rate of taxation for general purposes shall not exceed sixty-five (65) cents on the one hundred dollars valuation.

Ex. Session 1921, c. 106.

893. Certain taxes validated. All taxes levied by any municipality after the enactment of chapter one hundred and thirty-eight of public laws of one thousand nine hundred and seventeen, and prior to December sixth, one thousand nine hundred and twenty-one, are hereby ratified and validated, notwithstanding the rate of said taxes exceeded the maximum rate prescribed by law, or any other defect or irregularity in the levy thereof.

Ex. Session 1921, c. 106.

894. Outstanding floating debt validated, and may be funded. All floating or other indebtedness, not evidenced by bonds, which was outstanding on December sixth, one thousand nine hundred and twenty-one, and was incurred by a municipality in good faith for necessary expenses thereof (including floating or other indebtedness incurred in anticipation of the collection of taxes or for current expenses) is hereby validated, notwithstanding any want of power or authority to incur indebtedness for the purpose for which such indebtedness was incurred, and notwithstanding any defect in the procedure for incurring indebtedness, or any other defect or illegality, including the failure to observe any debt limit prescribed by law. The municipality may fund such outstanding indebtedness by issuing bonds as herein provided.

Ex. Session 1921, c. 106.

895. Repealing clause. All acts and parts of acts, whether general, special, private or local, regulating or relating in any way to the issuance of bonds or other obligations of a municipality, or relating to the subject-matter of this act, are hereby repealed: Provided, however, that this act shall not affect any local or private act enacted at the present session of the General Assembly, or regular session of one thousand nine hundred and twenty-one, but the powers hereby conferred and the methods of procedure hereby provided shall be deemed to be conferred and provided in addition to and not in substitution for those conferred or provided by any such local or private act enacted at the present session of the General Assembly, or regular session of one thousand nine hundred and twenty-one, so that any municipality may, at its option, proceed under any such local or private act applicable to it enacted at the present session of the General Assembly or regular session of one thousand nine hundred and twenty-one without regard to the restrictions imposed by this act, or may proceed under this act without regard to the restrictions imposed by any other act: Provided further, that this act shall

not affect any of the provisions of article nine of subchapter one of chapter fifty-six of the Consolidated Statutes (originally chapter fifty-six of the public laws of one thousand nine hundred and fifteen), except those provisions which prescribe methods of procedure for borrowing money or issuing bonds or other obligations, and said article shall apply to all municipalities in this state, notwithstanding any inconsistent, general, special, local or private laws: Provided further, that this act shall not affect any acts or proceedings heretofore done or taken for the issuance of bonds or other obligations under the Municipal Finance Act, as it stood prior to the ratification of this act or under any other act, and every municipality is hereby authorized to complete said acts and proceedings pursuant to the acts under which they were done or taken, and to issue said bonds or other obligations under such acts in the same manner as if this act had not been passed: Provided further, that this act shall not render invalid any bonds or notes or proceedings for the issuance of bonds or notes in cases where such bonds, notes or proceedings have been validated by any other act.

Ex. Session 1921, c. 106.

CHAPTER XIII.

TAXATION.

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This chapter is based on **The Tax Laws** prepared by the Department of Revenue.

SUBCHAPTER I. TAXATION IN GENERAL.

ART. 1. TAXATION OF CORPORATIONS BY THE STATE.

Upon all corporations, not exempt, the state imposes four taxes—the tax on organization, if local, and on domestication, if foreign; the annual tax on continued existence, commonly called the franchise tax; the tax on profits earned or realized in any manner, called the income tax; and the tax on the value of the corporation, including its capital stock, its good will, and all of the property of every character, whether tangible or intangible and all choses in action.

Besides these, a corporation will be required to pay any license or inspection tax for carrying on business which an individual would be required to pay for carrying on the same business. But as these taxes will be the same, and will be collected in the

same manner from corporations and individuals, they will not be discussed here. They can be found in Schedule "B" of the Revenue Act, and under the chapters in the Consolidated Statutes relating to fertilizers, oil, gasoline, fish and oysters, private hospitals for the insane, insurance and building and loan associations, sale of certain weapons, sale of seeds, and probably others.

ART. 2. ADMINISTRATION OF TAX LAWS.

The Legislature of 1921 enacted a law transferring all the taxing powers, both as to assessment and supervision of the collection, to a department created by it called the State Department of Revenue, administered by an officer called the Commissioner of Revenue. In consequence of this enactment, all the authority formerly possessed by the State Tax Commission over taxes of corporations and individuals has been transferred to the Department of Revenue and will be administered by the Commissioner of Revenue. This law is chapter 40, laws of 1921, section 1 of which is as follows (herein 976):

"From and after the first day of May, 1921, all the powers and duties imposed by any act of law, including Revenue and Machinery Acts, enacted by the present session of the General Assembly, upon the State Tax Commission, shall be transferred to and imposed upon a department to be known as the State Department of Revenue, created by this act, to be administered by the Commissioner of Revenue, to be appointed as provided in this act. All such powers and duties, except as otherwise provided herein, shall devolve upon the Commissioner of Revenue, and wherever in the revenue laws of the state the words 'State Tax Commission' are used such words shall, after May first, 1921, be held to mean Commissioner of Revenue, except as otherwise provided in this act."

ART. 3. TAXATION UPON ORGANIZATION OR ADMISSION INTO STATE.

The organization or charter taxes are set out in section 150. They are for organization, or for extension or renewal of corporate existence, 40c for each \$1,000 of the total amount of authorized capital stock, but not less than \$40.00 in any case. For increase of capital stock, 40c for each \$1,000 of the total increase authorized except the minimum is \$40.00. For other amendments to certificate of incorporation, including change of name or change of business, decrease of capital stock, increase or decrease of par value or number of shares, \$40.00. For dissolution, or change of principal place of business \$5.00. Corporations issuing shares without par value, under chapter 116, Laws of 1921, (here-

in 88), must pay the same tax as if each share of stock had a face or par value of \$100.00. These taxes are not cumulative; but where two or more of them shall be incurred at the same time, the higher rate shall be alone imposed.

Benevolent, religious, charitable and educational corporations with no capital stock, and corporations organized under section to promote public parks and drives are exempt from taxation, and are liable only for the charter fees.

Foreign corporations desiring to do business in this state must "domesticate" in accordance with section 113; and pay to the secretary of state a filing fee of \$5.00, and a tax of 20c on every \$1,000 of its total authorized capital stock: Provided, the amount of said tax shall never be less than \$25.00 nor more than \$250.00.

ART. 4. ANNUAL TAX ON CONTINUED EXISTENCE; SCHEDULE "C", REVENUE ACT OF 1921.

Upon domestic corporations, a tax is annually imposed of one-tenth (1/10) of one per cent upon the subscribed or issued and outstanding capital stock, but the minimum tax shall be \$10.00. No county or municipality is permitted to impose any franchise tax.

Foreign corporations shall pay a like tax upon the proportion of the capital stock devoted to this state, or to the business done in this state, as ascertained by the Commissioner of Revenue. Where it is made to appear that capital stock issued and outstanding is less than half the assessed value for taxation of all the property of such company in this state for the year in which the report is made; or when the report of a foreign corporation shows the proportion of its capital stock apportionable to this state to be less than half the assessed value for taxation of its property in this state for the same year, the franchise tax shall be computed with reference to one-half of the total value of the property in this state of such companies.

The above does not refer to the franchise tax upon railroads, banks, insurance companies, fraternal and benevolent associations, express, telephone and telegraph companies, or to other companies upon which specific franchise taxes may have been imposed.

ASSESSMENT OF FRANCHISE TAXES BY COMMISSIONER
OF REVENUE.

896. Franchise tax on corporations. 1. *Domestic corporations.*
a. Report to be made. Between the first day of May and the first day of July, one thousand nine hundred and thirteen, and annually thereafter during the month of May, each corporation organized under the laws of this state shall make a report in writing to the commissioner of revenue in such form as the commissioner may prescribe. Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice president, secretary, or general manager of the corporation, and forwarded to the commissioner. Such report shall contain:

1. The name of the corporation.
2. The location of its principal office.
3. The name of the president, secretary, treasurer, and members of the board of directors, with postoffice addresses of each.
4. The date of the annual election of officers.
5. The amount of authorized capital stock and the par value of each share.
6. The amount of capital stock subscribed, the amount of capital stock issued and outstanding, and the amount of capital stock paid up.
7. The nature and kind of business in which the corporation is engaged, and its place or places of business.
8. The change or changes, if any, in the above particulars made since the last annual report.

b. Amount of tax determined. Upon the filing of the report provided for in the last three preceding subsections, the commissioner, after finding such report to be correct, shall, on or before the first Monday of August, determine the amount of the subscribed or issued and outstanding capital stock of each such corporation. On the first Monday in August, or as soon thereafter as practicable, the commissioner shall certify the amount so determined by him to the auditor of the state, who shall charge for collection on or about August fifteenth, as herein provided, from such corporation, a fee of one-tenth of one per cent upon its subscribed or issued and outstanding capital stock, which fee

shall not be less than ten dollars in any case. Such fee shall be payable to the treasurer of the state on or before the first day of the following October. No county, city, or town shall have the power to levy any franchise tax under this section.

Where a report required to be made under the provisions of this section to the commissioner of revenue by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this state for the year in which report is made, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this state under the rules laid down in section 82 of this act (herein 896) to be less than one-half of the assessed value for taxation of all the property of such company in this state for the year in which such report is made, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this state.

2. *Foreign corporations. a. Report to be made.* Annually during the month of July, each foreign corporation doing business in this state, and owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law, and in addition to all other statements required by law, shall make a report in writing to the commissioner of revenue in such form as the commissioner may prescribe. Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, the vice president, secretary, superintendent, or managing agent in this state and forwarded to the commissioner, and shall contain:

1. The name of the corporation and under the laws of what state or country organized.
2. The location of its principal office.
3. The names of the president, secretary, treasurer, and members of the board of directors, with the postoffice address of each.
4. The date of the annual election of officers.
5. The amount of authorized capital stock, and the par value of each share.

6. The amount of capital stock subscribed, the amount of capital stock issued, and the amount of capital stock paid up.

7. The nature and kind of business in which the company is engaged, and its place or places of business, both within and without the state.

8. The name and location of its office or offices in this state, and the name and address of the officers or agents of the corporation in charge of its business in this state.

9. The value of the property owned and used by the company in this state, where situated, and the value of the property owned and used outside of this state, and where situated.

10. The volume of business done by the company in this state.

11. The volume of business done by the company outside of the state, and where the said business is done.

12. The change or changes, if any, in the above particulars, made since the last annual report.

b. Stock assessed. Upon the filing of the report provided for in subsections four, five, and six (subsection 2-a above), the commissioner, from the facts thus reported, and any other facts coming to his knowledge bearing upon the question, shall, on or before the first Monday in September, assess and fix the proportion of the subscribed or issued and outstanding capital stock of the company represented by its property or business in this state, and certify the same to the auditor of the state on or before the first Monday in October.

c. Amount of tax. On or before October fifteenth the auditor of state shall charge for collection, as herein provided, annually from such company, in addition to the initial fees otherwise provided for by law, for the privilege of exercising its franchise in this state, a fee of one-tenth of one per cent upon the proportion of the subscribed or issued and outstanding capital stock of the corporation represented by property owned and used for or business transacted in this state as found and certified by the commissioner of revenue, which fee shall not be less than ten dollars in any case. Such fee shall be payable to the treasurer of the state on or before the first day of the following December. No county, city, or town shall have the power to levy any franchise tax under this section.

3. *Certain corporations exempt.* Nothing in the preceding subsections of this act shall apply to railroads, banks, insurance companies, fraternal, beneficent associations, building and loan associations, express, telephone or telegraph companies, or other corporations, upon which a franchise tax may be levied in other sections of this act.

4. *General provisions. a. Findings reviewed.* Between the dates herein fixed for the determination of the amount of subscribed or issued and outstanding capital stock of a domestic corporation and the proportion of the authorized capital stock of a foreign corporation, represented by property owned and used or business transacted by it in this state, and the dates herein fixed for the certification to the auditor of state of such amount or proportion, the commissioner of revenue may, on the application of any person or company interested, or on his own motion, review and correct his findings.

b. *Receipt given.* Upon the payment of the tax or fee provided for in this act to the treasurer of state, the treasurer of state shall make out and deliver to the public utility or corporation so paying a receipt for the payment by such public utility or corporation of the tax or fee herein provided for.

c. *Lien.* The fees, taxes, and penalties required to be paid by this act shall be the first and best lien on all property of the public utility or corporation, whether such property is employed by the public utility or corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof.

5. *Penalties.* If a public utility or corporation required to file a report by any provision of this act fails or neglects to make such report as required herein, it shall be subject to a penalty of ten dollars per day for each day's omission after the time limited in this act for making such report.

6. *Collection of tax and penalties.* Such taxes and fees and penalties thereon may be certified by the state auditor to the sheriff of the county in which any such company has its home office, or of any county in which any such company may own property, for collection as provided in section four, and if collection is not made in this way such taxes or fees and penalties thereon may be recovered by an action in the name of the

state, which may be brought in the superior court of Wake county, or in any county in which such corporation has an office or place of business, or in which such public utility is doing business, or the line of any street, suburban, or interurban railroad company or railroad company is located, and such superior court shall have jurisdiction of such action regardless of the amount involved therein. The attorney-general, on request of the state treasurer, shall institute such action in the superior court of Wake county, or of any such counties as the state treasurer may direct. In any such action it shall be sufficient to allege that the tax, fee, or penalty sought to be recovered stands charged on the delinquent duplicate of the treasurer of state, and that the same has been unpaid for a period of thirty days after having been placed thereon.

7. *Failure of foreign corporations to comply.* All foreign corporations, and the officers and agents thereof, doing business in this state, shall be subject to all the liabilities and restrictions that are or may be imposed upon corporations of like character, organized under the laws of this state, and shall have no other or greater powers. Every contract made by or on behalf of any such foreign corporation, affecting the liability thereof, or relating to its property within this state, before it shall have complied with the provisions of section eleven hundred and ninety-four of the revisal of one thousand nine hundred and five (C. S., 1181) (herein 113), shall be wholly void on its behalf and on behalf of its assigns; but shall be enforceable against it or them. Nothing contained in this subsection shall be held or construed to apply to insurance corporations, fraternal, beneficiary associations, or building and loan associations, banking, railroad, express, telephone, and telegraph companies.

8. *Forfeiture for violation. a. Rights terminated.* If a corporation, wherever organized, required by the provisions of this act to file any report or return or to pay any tax or fee, either as a public utility or as a corporation, organized under the laws of this state, or as a foreign corporation doing business in this state and owning and using a part or all of its capital or plant in this state, or as a sleeping-car, freight line, or equipment company, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this act for making such report or return or for paying such tax or fee, the commissioner of revenue shall certify such fact to the secre-

tary of state. The secretary of state shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this state by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this state, by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state shall immediately notify such domestic or foreign corporation of the action taken by him.

b. Penalty for acting after rights terminated. Any person or persons who shall exercise, or attempt to exercise any powers, privileges, or franchises under the articles of incorporation or certificate of authority, after the same are canceled, as provided in any section of this act, shall be fined not less than one hundred dollars nor more than one thousand dollars.

9. How charter restored. Any corporation whose articles of incorporation or certificate of authority to do business in this state have been canceled by the secretary of state, as provided in subsection 8 of this section, upon the filing, within two years after such cancellation with the secretary of state, of a certificate from the commissioner of revenue, that it has complied with all the requirements of this act and paid all taxes, fees, or penalties due from it, and upon the payment to the secretary of state of an additional penalty of fifty dollars, shall be entitled to again exercise its rights, privileges, and franchises in this state, and the secretary of state shall cancel the entry made by him under the provisions of subsection 8 of this section, and shall issue his certificate entitling such corporation to exercise its rights, privileges, and franchises.

10. Injunction may issue. In addition to all other remedies for the collection of any taxes or fees due, under the provisions of this act, the attorney-general shall, upon request of the state treasurer, whenever any taxes, fees, or penalties due under this act from any public utility or corporation shall have remained unpaid for a period of ninety days, or whenever any corporation or public utility has failed or neglected for ninety days to make or file any report or return required by this act, or to pay any penalty for failure to make or file such report or return, apply to the superior court of Wake county, or of any county in the state in which such public utility or corporation is located or has

an office or place of business, for an injunction to restrain such public utility or corporation from the transaction of any business within this state until the payment of such taxes or fees and penalties thereon, or the making and filing of such report or return and payment of penalties for failure to make or file such report or return, and the cost of such application, which shall be fixed by the court. Such petition shall be in the name of the state, and if it is made to appear to the court, upon hearing, that such public utility or corporation has failed or neglected, for ninety days, to pay such taxes, fees, or penalties thereon, or to make and file such reports, or to pay such penalties for failure to make or file such reports or returns, such court shall grant and issue such injunction. All actions brought under this act shall have precedence over any civil cause of a different nature pending in such court, and such court shall always be deemed open for the trial of any such action brought therein.

11. *Quo warranto proceedings.* If any corporation fails or neglects to make and file the reports and returns required by this act, or to pay the penalties provided in this act for failure to make and file such reports or returns, for a period of ninety days after the time prescribed in this act, the attorney-general on request of the commissioner of revenue, shall commence an action of quo warranto in the superior court of Wake county or any county in this state in which such corporation is located or has an office or place of business, to forfeit and annul its privileges and franchises. If the court is satisfied that any such corporation is in default as aforesaid, it shall render judgment ousting such corporation from the exercise of its privileges and franchises within this state, and shall otherwise proceed as provided by law.

12. *Failure of officers, etc., of corporation to comply.* Whoever, being an officer, agent, or employee of any public utility, company, firm, person, copartnership, corporation, or association subject to the provisions of any law which the commissioner of revenue of North Carolina is required to administer, shall fail or refuse to fill out and return any blanks, as required by such law, or shall fail or refuse to answer any question therein propounded, or shall knowingly or willfully give a false answer to any such question wherein the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or refuse to exhibit to such commissioner, or any person duly authorized, any book, paper, account, record, or memorandum of such public

utility which is in his possession or under his control, shall be fined not more than one thousand dollars for each offense.

13. *Forfeiture by corporation.* A forfeiture of not less than five hundred dollars nor more than one thousand dollars shall be recovered from any such public utility, company, firm, person, copartnership, corporation, or association for each violation of the next preceding subsection when such officer, agent, or employee acted in obedience to the direction, instruction, or request of such public utility, company, corporation, or association, or any general officer thereof.

14. *Separate offenses.* Every day during which any public utility, company, corporation, association, firm, copartnership, officer, or individual, subject to the provisions of any law which the commissioner of revenue of North Carolina is required to administer, or any officer, agent, or employee thereof, shall willfully fail to observe and comply with any order or direction of such commissioner or to perform any duty enjoined by such law shall constitute a separate and distinct offense.

15. *Information to be furnished.* Each company, firm, corporation, person, association, copartnership, or public utility shall furnish the commissioner in the form of returns prescribed by him all information required by law and all other facts and information, in addition to the facts and information in this act specifically required to be given, which the commissioner of revenue may require to enable him to carry into effect the provisions of the laws which the commissioner is required to administer, and shall make specific answers to all questions submitted by the commissioner.

16. *Blanks prepared.* The commissioner of revenue shall cause to be prepared suitable blanks for carrying out the purpose of the laws which he is required to administer, and, on application, furnish such blanks to each company, firm, corporation, person, association, copartnership, or public utility subject thereto.

17. *Blanks to be filled and verified.* Any such company, firm, corporation, person, association, copartnership, or public utility receiving from the commissioner any blanks with directions to fill them, shall cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question, it shall, in writing, give a good and sufficient reason for such failure. The answers

to such questions shall be verified under oath by such person, or by the president, secretary, superintendent, general manager, principal accounting officer, partner, or agent, and return to the commissioner of revenue at his office within the period fixed by the commissioner.

18. *Time extended.* The commissioner of revenue, when he deems the same necessary or advisable, may extend to any corporation or public utility a further specified time, not to exceed ninety days, within which to file any report required by law to be filed with the commissioner, in which event the attaching or taking effect of any penalty for failure to file such report or pay any tax or fee shall be extended or postponed accordingly.

1921, c. 34, s. 82. Ex. Session, 1921, c. 102, s. 3.

897. Privilege tax on railroads. Every railroad company doing business in this State shall annually, on or before the thirtieth day of July, make and return to the Commissioner of Revenue, in such form and upon such blanks as shall be required and furnished by him, and giving such information as he shall require for the purpose of carrying out the provisions of this section, a report upon which the Commissioner of Revenue shall ascertain and certify to the State Auditor the value upon which the amount of tax to be paid by any such railroad as a license or privilege tax shall be calculated. The value upon which such calculation shall be made by the State Auditor, and the measure of the extent to which every such railroad company is carrying on intrastate commerce within the State of North Carolina, shall be the value of the total property, tangible and intangible, in this State, of each such railroad company as assessed for ad-valorem taxation for the year in which such report is made. The tax which every railroad company shall pay for the privilege of carrying on intrastate commerce within this state shall be one-tenth of one per cent of the value so ascertained and certified by the Commissioner of Revenue, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the Commissioner of Revenue to make an approximation from the reports and records on file in the State Department of Revenue of the value upon which the amount of tax due by the said company under this section shall be calculated, and to certify the said value to the State

Auditor. Upon that value the State Auditor shall then calculate the amount of the said tax, as hereinbefore provided, and shall certify the same to the State Treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section. Provided, that it is the intention of this section to levy upon railroads a license or privilege tax for the privilege of engaging in intrastate commerce carried on wholly within the State of North Carolina and not a part of interstate or foreign commerce; that the tax provided for in this section is not intended to be a tax on the privilege of engaging in interstate commerce, nor is it intended to be a tax on the business of interstate commerce, nor is it intended to be a tax having any relation to the interstate or foreign business or commerce in which any such railroad company may be engaged in addition to its business in this State.

1921, c. 34, s. 78; Ex. Session, 1921, c. 102, s. 2.

SUBCHAPTER II. INCOME TAX OR TAX ON PROFITS.

By constitutional amendment ratified in November, 1920, an important change was made in corporation taxation. By virtue of that amendment, Article V, Sec. 3, contains the following:

“The General Assembly may also tax trades, professions, franchise and income: Provided, the rate of tax on incomes shall not in any case exceed six percent.”

Certain exemptions are allowed to individuals, but none to corporations.

The General Assembly on March 8th, 1921, enacted a comprehensive act putting in force the Constitutional Amendment above referred to. Schedule “D” of the Revenue Act, 1921, is devoted to the income tax; and imposes tax upon incomes received during 1921 to be paid in 1922. As this is a recent enactment, not yet construed by any court, it is here given in its entirety.

ART. 5. SHORT TITLE AND DEFINITIONS.

898. Short title. This act shall be known and may be cited as The Income Tax Act of 1921.

1921, c. 34, s. 100.

899. Purpose of act; when effective. The general purpose of this act is to impose a tax, for the use of the state government,

upon the net income for the calendar year 1921, in excess of exemptions herein set out, collectible in the year 1922, and annually thereafter.

1. Of every citizen of the state.
2. Of every domestic corporation.
3. Of every foreign corporation and of every nonresident individual having a business or agency in this state, in proportion to the net income of such business or agency.

Except as otherwise provided in this act the purpose is to conform to the definitions of income in the revenue laws of the United States government and regulations made under its authority, in so far as they apply.

The tax imposed upon the net income of corporations in this schedule is in addition to the tax imposed under schedule C of this act.

1921, c. 34, s. 101; Ex. Session 1921, c. 102, s. 4.

900. Definitions. For the purpose of this act and unless otherwise required by the context:

1. The word "commissioner" means the state commissioner of revenue.

2. The word "taxpayer" includes any individual, corporation or fiduciary subject to the tax imposed by this act.

3. The word "individual" means a natural person.

4. The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporation, acting in any fiduciary capacity for any person, estate or trust.

5. The word "person" includes individuals, fiduciaries, partnerships and corporations.

6. The word "corporation" includes joint-stock companies or associations and insurance companies.

7. The words "domestic corporation" mean any corporation organized under the laws of this state.

8. The words "foreign corporation" mean any corporation other than a domestic corporation.

9. The words "tax year" mean the calendar year in which the tax is payable.

10. The words "income year" mean the calendar year or the fiscal year, upon the basis of which the net income is computed under this act; if no fiscal year has been established they mean the calendar year.

11. The words "fiscal year" mean an income year, ending on the last day of any month other than December.

12. The word "paid" for the purposes of the deductions under this act means "paid or accrued" or "paid or incurred," and the words "paid or accrued," "paid or incurred," and "incurred," shall be construed according to the method of accounting upon the basis of which the net income is computed under this act. The word "received" for the purpose of the computation of the net income under this act means "received or accrued," and the words "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

13. The word "resident" applies only to individuals, and includes for the purpose of determining liability to the tax imposed by this act, with reference to the income of any income year, any individual who shall be a resident of the state on the first day of the tax year. In the absence of other satisfactory indicia the residence of a person who has two or more places in which he occasionally dwells may be determined with reference to the place at which the individual lived the longest period of time during the income year.

14. The words "foreign country" mean any jurisdiction other than one embraced within the United States. The words "United States" when used in a geographical sense, include the States, the Territories of Alaska and Hawaii, the District of Columbia, and the possessions of the United States.

1921, c. 34, s. 102.

ART. 6. IMPOSITION OF TAX.

901. Tax on individuals. A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually, with respect to the net income of the taxpayer as herein defined, and upon income earned within this state of every nonresident having a business or agency in the state, computed at the following rates, after deducting the exemptions provided in this act:

On the excess over the amount legally exempted up to twenty-five hundred dollars, one per cent:

On the excess above twenty-five hundred dollars and up to five thousand dollars, one and one-half per cent.

On the excess above five thousand dollars and up to seven thousand, five hundred dollars, two per cent.

On the excess above seven thousand, five hundred dollars and up to ten thousand dollars, two and one-half per cent.

On the excess over ten thousand dollars, three per cent.

1921, c. 34, s. 200.

902. Tax on corporations. Every corporation organized under the laws of this state shall pay annually an income tax equivalent to three per cent of the entire net income of such corporation, as herein defined, received by such corporation during the income year; and every foreign corporation doing business in this state shall pay annually an income tax equivalent to three per cent of a proportion of its entire net income, to be determined according to the following rules:

In cases of a company other than companies mentioned in the next succeeding section, deriving profits principally from the ownership, sale, or rental of real estate or from the manufacture, sale, or use of tangible personal property, such proportion of its entire net income as the fair cash value of its real estate and tangible personal property in this state on the date of the close of the fiscal year of such company in the income year is to be fair cash value of its entire real estate and tangible personal property then owned by it, with no deduction on account of incumbrances thereon.

In case of a corporation deriving profits principally from the holding or sale of intangible property, such proportion as its gross receipts in this state for the year ended on the date of the close of its fiscal year next preceding is to its gross receipts for such year within and without the state.

1921, c. 34, s. 201; Ex. Session 1921, c. 102, s. 5.

903. Railroads and public-service corporations; basis of ascertaining net income. The basis of ascertaining the net income of every corporation engaged in the business of operating a steam or electric railroad, express service, telephone or telegraph business, or other form of public service, when such company is required to keep records according to the standard classification of accounting of the interstate commerce commission, shall be the "net operating income" of such corporations as shown by their records kept in accordance with that standard classification of accounts, when their business is wholly within this state, and when their business is in part within and in part without the

state their net income within this state shall be ascertained by taking their gross "operating revenues" within this state, including in their gross "operating revenues" within this state the equal mileage proportion within this state of their interstate business and deducting from their gross "operating revenues" the proportionate average of "operating expenses," or "operating ratio," for their whole business, as shown by the interstate commerce commission standard classification of accounts. From the net operating income thus ascertained shall be deducted "uncollectible revenue," and taxes paid in this state for the income year, other than income taxes and war profits and excess profits taxes, and the balance shall be deemed to be their net income taxable under this act.

1921, c. 34, s. 202.

904. Car hire considered. In determining the taxable income of a corporation engaged in the business of operating a railroad under the preceding section, section 202 (herein 903), in the case of a railroad located entirely within this state, the net operating income shall be increased or decreased to the extent of any credit or debit balance received or paid, as the case may be, on account of car hire; and when any railroad is located partly within and partly without this state, then said net operating income shall be increased or decreased to the extent of an equal mileage proportion within this state of any credit or debit balance, received or paid, as the case may be, on account of car hire.

1921, c. 35, s. 1.

905. Organizations that are exempt. The following organizations shall be exempt from taxation under this act:

(1) Fraternal beneficiary societies, orders or associations, (a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (b) providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents.

(2) Building and loan associations and co-operative banks without capital stock, organized and operated for mutual purposes and without profits.

(3) Cemetery corporations and corporations organized for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(4) Business leagues, chambers of commerce, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(5) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

(6) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

(7) Farmers or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or co-operative telephone companies or like organizations of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses.

(8) Farmers', fruit growers', or like organizations, organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them.

1921, c. 34, s. 204.

906. Tax on fiduciaries. 1. *Tax imposed.* The tax imposed by this act shall be imposed upon resident fiduciaries, and upon non-resident fiduciaries, having in charge funds or property for the benefit of a resident in this state, which tax shall be levied, collected and paid annually with respect to:

(a) That part of the net income of estates or trusts which has not been distributed or become distributable to beneficiaries during the income year.

(b) The net income received during the income year by deceased individuals who, at the time of death were residents and who have died during the tax year or the income year without having made a return.

(c) The entire net income of resident insolvent or incompetent individuals, whether or not any portion thereof is held for the future use of the beneficiaries, where the fiduciary has complete charge of such net income.

2. *Tax a charge.* The tax imposed upon a fiduciary by this act shall be a charge against the estate or trust.

1921, c. 34, s. 205.

907. When tax first levied and collected. Such tax shall first be levied, collected, and paid in the year 1922, and with respect to the net income received during the calendar year 1921 and annually thereafter.

1921, c. 34, s. 203; 1921, c. 35, s. 2.

ART. 7. DETERMINATION OF INCOME.

908. Net income defined. The words "net income" mean the gross income of a taxpayer less the deductions allowed by this act.

1921, c. 34, s. 300.

909. Gross income defined. 1. *Items included.* The words "gross income" include gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transactions of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income of the income year in which received by the taxpayer, unless, under the methods of accounting permitted under this act, any such amounts are to be properly accounted for as of a different period.

2. *Items not included.* The words "gross income" do not include the following items, which shall be exempt from taxation under this act:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured to individual beneficiaries or to the estate of the insured.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

(d) Interest upon the obligations of the United States or its possessions, or of the state of North Carolina.

(e) Salaries, wages, or other compensation received from the United States by officials or employees thereof, including persons in the military or naval forces of the United States.

(f) Any amounts received through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement, on account of such injuries or sickness.

(g) In case of insurance companies or associations paying a tax on their gross premium receipts, in addition to the above:

(a) The net addition required by law to be made within the taxable year to reserve funds (including the actual deposit of sums with the commissioner of insurance or the treasurer of the state pursuant to law as additions to guarantee or reserve funds for benefit of policyholders in this state), for the business done in the tax year in the state of North Carolina; and (b) the sums paid within the taxable year on policy and annuity contracts to policyholders in the state of North Carolina; (c) The said insurance companies are and shall be permitted to deduct the tax paid under the provisions of the income tax law of this state from the amount of tax paid under section sixty-seven of chapter thirty-four, public laws of one thousand nine hundred and twenty-one, being known as the Revenue Act.

1921, c. 34, s. 301; Ex. Session 1921, c. 105, s. 1.

910. Basis of return of net income. 1. Taxpayers who customarily estimate their income on a basis other than that of actual cash receipts and disbursements may, with the approval of the commissioner of revenue, return their net income under this act upon a similar basis. Taxpayers who customarily estimate their income on the basis of an established fiscal year instead of on that of the calendar year, may, with the approval of the commissioner of revenue, and subject to such rules and regulations as it may establish, return their net income under this act on the basis of such fiscal year, in lieu of that of the calendar year.

2. A taxpayer may, with the approval of the commissioner of revenue, and under such regulations as he may prescribe, change the income year from fiscal year to calendar year or otherwise, in which case his net income shall be computed upon the basis of such new income year.

3. An individual carrying on business in partnership shall be liable for income tax only in his individual capacity, and shall include in his gross income the distributive share of the net income of the partnership received by him or distributed to him during the income year.

4. Every individual taxable under this act who is a beneficiary of an estate or trust, shall include in his gross income the distributive share of the net income of the estate or trust, received by him or distributable to him during the income year. Unless otherwise provided in the law, the will, the deed, or other instrument creating the estate, trust or fiduciary relation, the net income shall be deemed to be distributed or distributable to the beneficiaries (including the fiduciary as a beneficiary, in the case of income accumulated for future distribution) ratably, in proportion to their respective interests.

1921, c. 34, s. 302.

911. Determination of gain or loss. For the purpose of ascertaining the gain or loss from the sale or other disposition of property, real, personal or mixed, the basis shall be, in the case of property acquired before January 1, 1921, the fair market price or value of such property as of that date, if such price or value exceeds the original cost, and in all other cases, the cost thereof: Provided, that in the case of property which was included in the last preceding annual inventory used in determining net income in a return under this act, such inventory value shall be taken in lieu of cost or market value. The final distribution to the taxpayer of the assets of a corporation shall be created as a sale of the stock or securities of the corporation owned by him and the gain or loss shall be computed accordingly. If at any time gains and profits realized by sale of property by other than traders in such property at an increase over the purchase price, or an increase over the fair value of the property on January 1, 1921, shall be held by the Supreme Court of the United States not to be taxable income by the United States government, such decision shall govern the liability of such gains and profits for taxation as income under this act.

1921, c. 34, s. 303.

912. Exchanges of property. 1. When property is exchanged for other property, the property received in exchange shall, for the purpose of determining gain or loss, be treated as the equivalent of cash to the amount of its fair market value: Provided, a

market exists in which all the property so received can be disposed of at the time of exchange, for a reasonably certain and definite price in cash; otherwise such exchange shall be considered as a conversion of assets from one form to another, from which no gain or loss shall be deemed to arise.

2. In the case of the organization of a corporation, the stock or securities received shall be considered to take the place of property transferred therefor and no gain or loss shall be deemed to arise therefrom.

3. When, in connection with the reorganization, merger, or consolidation of a corporation, a taxpayer receives, in place of stock or securities, owned by him, new stock or securities. the basis of computing the gain or loss if any shall be, in case the stock or securities owned were acquired before January 1, 1921, the fair market price or value thereof as of that date, if such price or value exceeds the original cost, and in all other cases the cost thereof.

1921, c. 34, s. 304.

913. Inventories. Whenever in the opinion of the commissioner of revenue the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer, upon such basis as the commissioner may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income, and conforming so far as may be, to the forms and methods prescribed by the United States commissioner of internal revenue, under the act of congress then providing for the taxation of income.

1921, c. 34, s. 305.

914. Deductions allowed in computing net income. In computing net income there shall be allowed as deductions:

1. *Expenses.* All the ordinary and necessary expenses paid during the income year in carrying on any trade or business, including:

(a) As to individuals, wages of employees for services actually rendered in producing such income.

(b) As to partnerships, wages of employees and a reasonable allowance for copartners or members of a firm, for services actually rendered in producing such income, the amount of such salary allowance to be included in the personal return of the copartner receiving same.

(c) As to corporations, wages of employees and salaries of officers, if reasonable in amount, for services actually rendered in producing such income.

2. *Rents.* Rentals, or other payments required to be made as a condition of the continued use or possession, for the purposes of the trade of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

3. *Interest paid.* All interest paid during the income year on indebtedness except interest on obligations contracted for the purchase of nontaxable securities. Dividends on preferred stock shall not be deducted as interest.

4. *Taxes.* Taxes for the income year, except taxes on income and war profits, and excess profits taxes, inheritance taxes, and taxes assessed for local benefit of a kind tending to increase the value of the property assessed.

5. *Dividends from corporations paying income tax.* Dividends from stock in any corporation the income of which shall have been assessed and the tax on such income paid by the corporation under the provisions of this act: Provided, that when only part of the income of any corporation shall have been assessed under this act only a corresponding part of the dividends received therefrom shall be deducted.

6. *Losses sustained.* Losses sustained during the income year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit.

7. *Debts charged off.* Debts ascertained to be worthless and charged off within the income year, if the amount has previously been included in gross income in a return under this act.

8. *Depreciation and depletion; basis of deduction.* A reasonable allowance for the depreciation and obsolescence of property used in the trade or business; and, in the case of mines, oil, and gas wells, other natural deposits, and timber, a reasonable allowance for depletion: Provided, that in computing the deductions allowed under this paragraph, the basis shall be the cost (including in the case of mines, oil, and gas wells, and other natural deposits, the cost of development, not otherwise deducted), and in the case of property acquired prior to January 1, 1921, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date. The

reasonable allowances under this paragraph shall be made under rules and regulations to be prescribed by the commissioner of revenue. In the case of leases the deductions allowed may be equitably apportioned between the lessor and lessee.

9. *Reserves for contingent liabilities.* In the case of taxpayers who keep regular books of account, upon an accrual basis and in accordance with standard accounting practice, reserves for bad debts and for contingent liabilities, under such rules and restrictions as the commissioner of revenue may impose. If the commissioner shall at any time deem the reserve excessive in amount he may restore such excess to income, either in a subsequent year or as a part of the income of the income year and assess it accordingly.

10. *Charitable, etc., contributions.* Contributions or gifts made within the taxable year to corporations or associations operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer's net income as computed without the benefit of this subdivision.

11. *Income from business or property in another state.* Resident individuals having an established business in another state, or investment in property in another state, may deduct the net income from such business or investment, if such business or investment is in a state that levies a tax upon such net income. The deductions authorized in this subsection shall in no case extend to any part of income of resident individuals from personal services, or mortgages, stocks, bonds, securities and deposits.

12. *Determination and allocation of deductions.* In the case of a nonresident individual, the deductions allowed in this section shall be allowed only if, and to the extent that, they are connected with income arising from sources within the state; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the state shall be determined under rules and regulations prescribed by the state commissioner of revenue.

1921, c. 34, s. 306.

915. Items not deductible. In computing net income no deduction shall in any case be allowed in respect of:

1. Personal, living, or family expenses.
 2. Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate.
 3. Any amount expended in restoring property for which an allowance is or has been made.
 4. Premiums paid on any life insurance policy.
- 1921, c. 34, s. 307.

916. Exemptions. 1. *What may be deducted.* There shall be deducted from the net income the following exemptions:

(a) In the case of a single individual, a personal exemption of \$1,000.

(b) In the case of a married man with a wife living with him, \$2,000.

(c) In the case of a widow or widower having minor child or children, natural or adopted, \$2,000.

(d) \$200 for each individual (other than husband and wife) dependent upon and receiving his chief support from the taxpayer, if such dependent individual is under eighteen years of age or is incapable of self-support, because mentally or physically defective.

(e) In the case of a fiduciary, if taxable under clause (a) of paragraph 1 of section 205 (herein 906), a personal exemption of \$1,000; if taxable under clause (b) of said paragraph, the same exemption as would be allowed the deceased, if living; if taxable under clause (c) of said paragraph the same exemptions to which the beneficiary would be entitled.

2. *When exemptions not allowed.* The exemptions allowed by this section shall not be allowed with respect to a resident of this state having income from a business or agency in another state, or with respect to a non-resident having a business or agency in this state, unless the entire income of such resident or non-resident individual is shown in the return of such resident or non-resident, and if the entire income is so shown the exemption shall be prorated in the proportion of the income in this state to the total income.

3. *Determination of right.* The status on the last day of the income year shall determine the right to the exemptions provided in this section: Provided, that a taxpayer shall be entitled to such exemptions for husband or wife or dependent who has died during the income year.

1921, c. 34, s. 308.

ART. 8. RETURNS.

917. Persons and corporations required to make returns.

1. *Details of returns.* Every resident or nonresident having a net income during the income year taxable in this state of \$1,000 and over, if single, or if married and not living with husband or wife; or having a net income for the income year of \$2,000 or over, if married and living with husband or wife; and every corporation having a net income in excess of \$1,000, shall make a return under oath, stating specifically the items of gross income and the deductions and exemptions allowed by this act, and such other facts as the commissioner of revenue may require for the purpose of making any computation required by this act. When the commissioner of revenue has reason to believe any person or corporation is liable for tax under this act, he may require any such person or corporation to make a return.

2. *Husband and wife.* If a husband and wife living together have an aggregate net income of \$2,000 or over, each shall make such a return, unless the income of each is included in a single joint return.

3. *Persons under disability.* If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

4. *Verification of corporation return.* The return by a corporation shall be sworn to by the president, vice-president, or other principal officer, and by the treasurer or assistant treasurer.

5. *Personal representatives.* The return of an individual who, while living, received income in excess of the exemption during the income year and who has died before making the return, shall be made in his name and behalf by the administrator or executor of the estate and the tax shall be levied upon and collected from his estate.

6. *Corporations dissolving.* Before a corporation shall be dissolved and its assets distributed it shall make return for and settlement of tax for any income earned in the tax year up to its period of dissolution.

7. *Returns investigated.* Where the commissioner of revenue has reason to believe that any taxpayer so conducts the trade or business as either directly or indirectly to distort his true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for service or otherwise, whereby the net income is arbi-

trarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, he may require such facts as he deems necessary for the proper computation of the entire net income and the net income properly attributable to the state and in determining the same the commissioner shall have regard to the fair profit which would normally arise from the conduct of the trade or business.

1921, c. 34, s. 400.

918. Returns by fiduciaries. 1. Every fiduciary subject to taxation under the provisions of this act as provided in section 205 hereof (herein 906) shall make a return under oath, for the individual, estate or trust for whom or for which he acts, if the net income thereof amounts to \$1,000 or over.

2. The return made by a fiduciary shall state specifically the items of gross income, and the deductions and exemptions allowed by this act and such other facts as the commissioner of revenue may prescribe. Under such regulations as the commissioner of revenue may prescribe a return may be made by one or two or more joint fiduciaries.

3. Fiduciaries required to make returns under this act shall be subject to all the provisions of this act which apply to individuals.

1921, c. 34, s. 401.

919. Information at source. 1. *Payments reported.* Every individual, partnership, corporation, joint-stock company or association or insurance company, being a resident or having a place of business in this state, in whatever capacity acting, including lessee or mortgagors of real or personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits and income, amounting to \$1,000 or over, paid or payable during any year to any taxpayer, shall make complete return thereof to the commissioner of revenue, under such regulations and in such form and manner and to such extent as may be prescribed by him.

2. *Partnership payments to partners.* Every partnership, having a place of business in the state, shall make a return, stating specifically the items of its gross income and the deductions allowed by this act, and shall include in the return the names and addresses of the individuals who would be entitled to share in the

net income of distributee, and the amount of the distributive share of each individual. The return shall be sworn to by one of the partners.

3. *Payments by fiduciaries to beneficiaries.* Every fiduciary shall make, under oath, a return for the individual, estate or trust for whom or for which he acts, if the net income thereof, distributed or distributable to beneficiaries during the year, is one thousand dollars or over, in which case the fiduciary shall set forth in such return the items of the gross income, the deductions allowed by this act, and the net income, the names and addresses of the beneficiaries, the amounts distributed or distributable to each and the amount, if any, lawfully retained by him for future distribution. Such return may be made by one of two or more joint fiduciaries.

1921, c. 34, s. 402.

920. Time and place of filing returns. Returns shall be in such forms as the commissioner of revenue may from time to time prescribe and shall be filed with the commissioner of revenue, at his office in Raleigh or at any branch office which he may establish, on or before the fifteenth day of March in each year, and for all taxpayers using a fiscal year, within sixty days after expiration of the fiscal year. In case of sickness, absence, or other disability, or whenever in his judgment good cause exists, the commissioner of revenue may allow further time for filing returns. There shall be annexed to the return the affidavit or affirmation of the taxpayer making the return, to the effect that the statements contained therein are true. The commissioner of revenue shall cause to be prepared blank forms for the said returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making any return herein required.

1921, c. 34, s. 403.

921. Blank forms kept on file with register of deeds. For convenience of all parties liable for making a return of income, and who may not receive blank forms by mail for this purpose, the commissioner of revenue shall keep on deposit with the register of deeds in each county a supply of blank forms for distribution.

1921, c. 34, s. 404.

922. Failure to file returns; supplementary returns. If the commissioner of revenue shall be of the opinion that any tax-

payer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, he may require from such taxpayer a return, or a supplementary return, under oath, in such form as he shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this act. If from a supplementary return, or otherwise, the commissioner of revenue finds that any items of income, taxable under this act, have been omitted from the original return, or any items returned as taxable that are not taxable, or any item of taxable income overstated, he may require the items so omitted to be disclosed to him, under oath of the taxpayer, and to be added to or deducted from the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this act. The commissioner of revenue may proceed under the provisions of section 502 (herein 925), whether or not he requires a return or a supplementary return under this section.

1921, c. 34, s. 405.

ART. 9. COLLECTION AND ENFORCEMENT OF TAX.

923. Time and place of payment. 1. The full amount of the tax payable, as the same shall appear from the face of the return, shall be paid to the commissioner of revenue at the office where the return is filed at the time fixed by law for filing the return. If the time for filing the return shall be extended, interest at the rate of six per cent per annum, from the time when the return was originally required to be filed, to the time of payment, shall be added and paid.

2. The tax may be paid with uncertified check, during such time and under such regulations as the commissioner of revenue shall prescribe, but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties, the same as if such check had not been tendered.

1921, c. 34, s. 500.

924. Examination of returns. 1. *Computation of tax; payment of deficiency.* As soon as practicable after the return is filed the commissioner of revenue shall examine it and compute the tax,

and the amount so computed by the commissioner shall be the tax. If the tax found due shall be greater than the amount theretofore paid, the excess shall be paid to the commissioner of revenue within ten days after notice of the amount shall be mailed by the commissioner, and any overpayment of tax shall be returned within ten days after it is ascertained.

2. *Return in good faith.* If the return is made in good faith and the understatement of the tax is not due to any fault of the taxpayer, there shall be no penalty or additional tax added because of such understatement, but interest shall be added to the amount of the deficiency at the rate of one per cent for each month or fraction of a month.

3. *Penalty for negligence.* If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added to the amount of the deficiency five per cent thereof, and in addition, interest at the rate of one per cent per month or fraction of a month.

4. *Penalty for fraudulent statement.* If the understatement is false or fraudulent, with intent to evade the tax, the tax on the additional income discovered to be taxable shall be doubled and an additional one per cent per month or fraction of a month shall be added.

5. *Computation of interest.* The interest provided for in this section shall in all cases be computed from the date the tax was originally due to the date of payment.

6. *Refund of overpayment.* If the amount of tax found due as computed shall be less than the amount theretofore paid, the excess shall be refunded by the commissioner of revenue out of the proceeds of the tax retained by him as provided in this act.

1921, c. 34, s. 501.

925. Corrections and changes. If the amount of the net income for any year of any taxpayer under this article as returned to the United States Treasury Department is changed or corrected by the United States commissioner of internal revenue or other office of the United States or competent authority, such taxpayer, within ten days after receipt of notice of such change or correction, shall make return under oath or affirmation to the state commissioner of revenue of such changed or corrected net income, and shall concede the accuracy of such determination or state wherein it is erroneous.

The state commissioner of revenue shall ascertain, from such return and any other information in his possession, the entire

net income of such taxpayer for the fiscal or calendar year for which such change or correction has been made by such United States commissioner of internal revenue or other officer or authority. The state commissioner of revenue shall thereupon readudit and restate the account of such taxpayer for taxes based upon the entire net income for such fiscal or calendar year, such readudit to be according to the entire net income so ascertained by the state commissioner of revenue. The proceedings and determination of the state commissioner of revenue in the making of such reassessment may be revised and readjusted and reviewed as in the case of an original assessment of the tax. If from such reassessment it appears that such taxpayer shall have paid under this article an excess of tax for the year for which such reassessment is made, the commissioner shall within thirty days refund the amount of such excess. If from such reassessment it appears that an additional tax is due from such taxpayer for such year, such taxpayer shall, within thirty days after notice has been given in by the commissioner of revenue, pay such additional tax.

1901, c. 34, s. 502.

926. Incomes that have not been assessed. If the commissioner of revenue discovers from the examination of the return or otherwise that the income of any taxpayer, or any portion thereof, has not been assessed, he may, at any time within two years after the time when the return was made due, assess the same and give notice to the taxpayer of such assessment, and such taxpayer shall thereupon have an opportunity, within thirty days, to confer with the commissioner as to the proposed assessment. The limitation of two years to the assessment of such tax or additional tax shall not apply to the assessment of additional taxes upon fraudulent returns. After the expiration of thirty days from such notification the commissioner of revenue shall assess the income of such taxpayer or any portion thereof which he believes has not theretofore been assessed and shall give notice to the taxpayer so assessed, of the amount of the tax and interest and penalties, if any, and the amount thereof shall be due and payable within ten days from the date of such notice. The provisions of this act with respect to revision and appeal shall apply to a tax so assessed. No additional tax amounting to less than one dollar shall be assessed.

1921, c. 34, s. 503.

927. Warrant for collection of tax. If any tax imposed by this act or any portion of such tax be not paid within sixty days after

the same becomes due, the commissioner of revenue shall issue an order under his hand and official seal directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the taxpayer, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the same and to return to the commissioner of revenue the money collected by virtue thereof by a time to be therein specified, not less than sixty days from the date of the order. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his service in executing the order, to be collected in the same manner. If an order be returned not satisfied in full, the commissioner of revenue shall have the same remedies to enforce the claim for taxes against the taxpayer as if the state had recovered judgment against the taxpayer for the amount of the tax.

1921, c. 34, s. 504.

928. Tax a debt. Every tax imposed by this act, and all increases, interest and penalties thereon, shall become, from the time it is due and payable, a personal debt, from the person or persons liable to pay the same, to the state of North Carolina.

1921, c. 34, s. 505.

929. Action for recovery of tax. Action may be brought at any time by the attorney-general of the state, at the instance of the commissioner of revenue, in the name of the state, to recover the amount of any taxes, penalties and interest due under this act.

1921, c. 34, s. 506.

930. Tax upon settlement of fiduciary's account. 1. No final account of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this act upon said fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise. The certificate of the commissioner of revenue and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax, to the extent of said certificate.

2. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the commissioner of revenue,

with the approval of the attorney-general, may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this act, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

1921, c. 34, s. 507.

ART. 10. PENALTIES.

931. Penalties. 1. *Failing to file returns or pay tax without intent to evade.* If any taxpayer, without intent to evade any tax imposed by this act shall fail to file a return of income or pay a tax, if one is due, at the time required by or under the provisions of this act, but shall voluntarily file a correct return of income and pay the tax due within sixty days thereafter, there shall be added to the tax an additional amount equal to five per cent thereof, but such additional amount shall in no case be less than one dollar and an additional one per cent for each month or fraction of a month during which the tax remains unpaid.

2. *Voluntary failure to file or pay.* If any taxpayer fails voluntarily to file a return of income or pay a tax, if one is due, within sixty days of the time required by or under the provisions of this act, the tax shall be doubled, and such doubled tax shall be increased by one per cent for each month or fraction of a month from the time the tax was originally due to the date of payment.

3. *Commissioner may waive or reduce penalties.* The commissioner of revenue shall have power, upon making a record of his reasons therefor, to waive or reduce any of the additional taxes or interest provided in subdivisions 1 and 2 of this section, or in subdivisions 2, 3, and 4 of section 501 (herein 924).

4. *Mandamus to compel returns.* If any taxpayer fails to file a return within sixty days of the time prescribed by this act, any judge of the superior court, upon petition of the commissioner of revenue, or of any ten taxable residents of the state, shall issue a writ of mandamus requiring such person to file a return. The order of notice upon the petition shall be returnable not later than ten days after the filing of the petition. The petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case, consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing

party. All writs and processes may be issued from the clerk's office in any county and, except as aforesaid, shall be returnable as the court shall order.

5. *Neglect without fraudulent intent.* Any person who, without fraudulent intent, fails to pay any tax or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, shall be liable to a penalty of not more than one thousand dollars, to be recovered by the attorney-general, in the name of the people, by action in any court of competent jurisdiction.

6. *Intentional neglect.* Any person or officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any requirement of this act, or any lawful requirement of the commissioner of revenue thereunder, shall fail to pay any tax or to make, sign, or verify any return, or to supply any information required by or under the provisions of this act, or who, with like intent, shall make, render, sign or verify any false or fraudulent return or statement, or shall supply any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars, to be recovered by the attorney-general in the name of the people, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor, and shall, upon conviction, be fined not to exceed one thousand dollars or be imprisoned not to exceed one year, or both, at the discretion of the court. *

7. *Compromise of penalties.* The attorney-general shall have the power, with the consent of the commissioner of revenue, to compromise any penalty for which he is authorized to bring action under subdivisions 5 and 6 of this section. The penalties provided by such subdivisions shall be additional to all other penalties in this act provided.

8. *Where act deemed committed.* The failure to do any act required by or under the provisions of this act shall be deemed an act committed in part at the office of the commissioner of revenue in Raleigh.

9. *Evidence of evasion.* The certificate of the commissioner of revenue to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

10. *Delinquent's income determined.* If any taxpayer who has failed to file a return, or has filed an incorrect or insufficient

return, and has been notified by the commissioner of revenue of his delinquency, refuses or neglects within twenty days after such notice to file a proper return, or files a fraudulent return, the commissioner shall determine the income of such taxpayer, according to his best information and belief, and assess the same at not more than double the amount so determined. The commissioner may, in his discretion, allow further time for the filing of a return in such case.

1921, c. 34, s. 600.

ART. 11. REVISION AND APPEAL.

932. Revision by commissioner of revenue. A taxpayer may apply to the commissioner of revenue for revision of the tax assessed against him, at any time within one year from the time of the filing of the return or from the date of the notice of the assessment of any additional tax. The commissioner shall grant a hearing thereon, and if, upon such hearing, he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts and adjust the computation of tax accordingly. The commissioner shall notify the taxpayer of his determination and shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to be due. If the taxpayer has failed, without good cause, to file a return within the time prescribed by law, or has filed a fraudulent return, or, having filed an incorrect return, has failed, after notice to file a proper return, the commissioner shall not reduce the tax below double the amount for which the taxpayer is found to be properly assessed.

1921, c. 34, s. 700.

933. Appeal to superior court. Any taxpayer may file formal exceptions to any finding by the commissioner of revenue with respect to his taxable income, and upon such exceptions being overruled, any such taxpayer shall have the right, upon the payment of the amount of tax found by the commissioner to be due, and upon filing bond for costs in the sum of two hundred dollars, to have the record in such cases certified to the superior court of the county in which the taxpayer resides, or has his principal place of business, within thirty days after notice by the commissioner of his determination, given as provided in section 700 (herein 932). Thereupon, appropriate proceedings shall be had and the relief, if any, to which the taxpayer may be found entitled

may be granted and any taxes, interest or penalties paid, found by the court to be in excess of those legally assessed, shall be ordered refunded to the taxpayer, with interest from time of payment.

1921, c. 34, s. 701.

ART. 12. ADMINISTRATION.

934. Commissioner of revenue to administer act. The commissioner of revenue shall administer and enforce the tax herein imposed, for which purpose he may divide the state into districts, in each of which a branch office of the department of revenue may be established. He may from time to time change the limits of such districts.

1921, c. 34, s. 800.

935. Commissioner's powers. The commissioner of revenue, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any taxpayer, shall have power to examine or cause to be examined by any agent or representative designated by him for that purpose, any books, papers, records or memoranda, bearing upon the matters required to be included in the return, and may require the attendance of the taxpayer or of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oath to such person or persons.

1921, c. 34, s. 801.

936. Officers, agents and employees; expenses. 1. *Income tax director.* The commissioner of revenue may appoint and remove a person to be known as the income tax director, who, under his direction shall have supervision and control of the assessment and collection of the income taxes provided in this act; the commissioner may also appoint such other officers, agents, deputies, clerks and employees as he may deem necessary, such persons to have such duties and powers as the commissioner may from time to time prescribe.

2. *Expense of enforcing act.* For the reasonable necessary expenses of carrying out the provisions of this act, including salaries and necessary traveling expenses of officers, deputies, agents, clerks, and employees, warrants shall be issued by the state auditor and paid by the state treasurer out of any funds not otherwise appropriated, upon approved vouchers by the commis-

sioner of revenue, and the commissioner shall not later than the tenth of each month file with the state budget commission a complete statement of all vouchers approved for the previous month, and upon any item in said account being disapproved by the state budget commission, the same shall be discontinued at once.

2. *Bonds.* The commissioner of revenue may require such of the officers, agents, and employees as he may designate to give bond for the faithful performance of their duties in such sum and with such sureties as he may determine, and all premiums on such bonds shall be paid in the manner provided for the payment of other expenses in the preceding section.

1921, c. 34, s. 802.

937. Oaths and acknowledgments. The commissioner of revenue and such officers as he may designate, shall have the power to administer an oath to any person or to take the acknowledgment of any person in respect of any return or report required by this act or the rules and regulations of the commissioner.

1921, c. 34, s. 803.

938. Statistics published. The commissioner of revenue shall prepare and publish annually statistics reasonably available, with respect to the operation of this act, including amounts collected, classification of taxpayers, income and exemptions, and such other facts as are deemed pertinent and valuable.

1921, c. 34, s. 804.

939. Secrecy of officials required. 1. *Secrecy required.* Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of revenue, any deputy, agent, clerk, or other officer or employee, to divulge and make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act. Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney-general or other legal representatives of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this act. Reports and returns shall be preserved for three years and thereafter, until the commissioner orders them to be destroyed.

2. *Penalty for violation.* Any offence against subdivision one of this section shall be punished by a fine of not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender be an officer or employee of the state he shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

3. *Information to federal and state officials.* Notwithstanding the provisions of this section the commissioner of revenue, may permit the United States commissioner of internal revenue, or the proper officer of any state imposing an income tax upon the income of individuals, or the authorized representative of either such officer, to inspect the income tax returns of any individual or may furnish to such officer or his authorized representative an abstract of the return of income of any taxpayer or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any taxpayer; but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes of the United States or of such other state, as the case may be, grants substantially similar privileges to the proper officer of this state charged with the administration of the personal income tax law thereof.

1921, c. 34, s. 805.

940. Regulations. The commissioner of revenue may from time to time make such rules and regulations, not inconsistent with this act, as he may deem necessary to enforce its provisions.

1921, c. 34, s. 806.

ART. 13. MISCELLANEOUS PROVISIONS.

941. Unconstitutionality or invalidity. If any clause, sentence, paragraph, or part of this act shall, for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. No caption of any section or set of sections shall in any way affect the interpretation of this act or any part thereof.

1921, c. 34, s. 900.

942. Disposition of income tax. The commissioner of revenue shall, on or before the twenty-fifth day of each month, pay into

the state treasury to the credit of the general fund, all taxes, interest and penalties collected by him under this article during the preceding calendar month as appears from the return made by him to the state treasurer.

1921, c. 34, s. 901.

943. Counties and towns not to levy income taxes. No city, town, township, or county shall levy any tax on income, or inheritance tax.

1921, c. 34, s. 902.

SUBCHAPTER III. TAX ON PROPERTY OR THE AD VALOREM TAX.

Article V, Sec. 3, of the Constitution provides: "Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stock, joint stock companies or otherwise; and also all real and personal property at its real value in money."

Article V, Sec. 6.—"The total of the state and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the state for the term required by Article IX, Sec. 3 of the Constitution: Provided further, the state tax shall not exceed five cents on the one hundred dollars of property."

Article VII, Sec. 7.—"No county, city, town or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein."

Article VII, Sec. 9.—"All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same, except property exempted by this Constitution."

The equation of taxation between property and poll was abrogated by the tax amendment to the Constitution adopted in 1920. The decisions on that subject are not applicable to the Constitution, since the amendment became effective in 1921.

The rate fifteen cents on the hundred dollars of property is subject to several modifications, and it can hardly be considered an

effective limitation. This rate must be exceeded if necessary to maintain a six months' public school in each school district. Art. IX, Sec. 3, Constitution.

Counties may, with legislative permission, levy tax in excess of 15-cent rate for special purposes and necessary expenses. The terms "necessary expenses" and "special purposes" have been defined by our Supreme Court. They include the cost of building courthouses, jails, homes for the aged, roads, municipal buildings; and the payment of prior debts incurred for the necessary expenses of government.—*Hightower v. Raleigh*, 150 N. C. 569, 65 S. E. 279; *Davis v. Lenoir*, 178 N. C. 668, 101 S. E. 260.

Cities and towns are given authority to exceed this limitation (See Sec. 892), and it is not likely that there are many subdivisions of the state wherein the 15-cent rate is not exceeded.

So much for the rate of the property tax. It must be imposed upon citizen or individual and corporation alike. But the method of estimating the value of the property of the individual and the corporation, and the method of collecting the tax, are necessarily different.

A state tax on property will be found, when one be levied, in Schedule "A" of the Revenue Act. Authority to counties, other municipalities and subdivisions of the state, to exceed the 15-cent limit will be found in the Municipal Finance Act, in the charters of many towns, and in many general and special acts too numerous to mention here.

The state prescribed, in the Machinery Act, Chap. 38, Laws of 1921, the method of assessing the value of all property for taxation; and the values so fixed are the basis for all taxation, whether it be state, county, municipal or special taxing district. It becomes important to give the method prescribed by said act for assessing the property of corporations for taxation.

"The property of a corporation shall be given in by the president, cashier, treasurer, or other person appointed for that purpose." Conclusion Sec. 31, Machinery Act.

ASSESSMENTS BY COMMISSIONER OF REVENUE.

ART. 14. PRIVATE CORPORATIONS.

944. Reports from corporations. 1. *What report contains.* Hereafter, except in the case of such corporations as are especially

mentioned by name in other sections of this or the revenue act, and required to make statements in other forms, it shall be the duty of the president, chairman, or treasurer of every corporation having capital stock, every joint-stock association, or limited partnership whatsoever, now or hereafter organized or incorporated by or under any law of this state, to make a report in writing to the commissioner of revenue on or before the first day of July of each year, stating specifically:

First. Total authorized capital stock.

Second. Total authorized number of shares.

Third. Number of shares of stock issued.

Fourth. Par value of each share.

Fifth. Amount paid into the treasury on each share.

Sixth. Amount of capital stock paid in.

Seventh. Amount of capital on which dividend was declared.

Eighth. Date of each dividend during said year ending with the first day of May.

Ninth. Amount of each dividend during the year ending with the first Monday in said month.

Tenth. Highest price of sales of stock between the first and fifteenth days of May; highest price of sale of stock during the year aforesaid; average price of sales of stock during the year.

2. *Appraise capital stock.* In said report one of the following named officers of such corporation, limited partnership, or joint-stock association, namely, the president, chairman, secretary, or treasurer, after being duly sworn or affirmed to do and perform the same with fidelity and according to the best of his knowledge and belief, shall estimate and appraise the capital stock of said company at its actual value in cash on the first day of May, after deducting therefrom the assessed value of all real and personal estate upon which the corporation pays tax, and the value of the shares of stock legally held and owned by such corporation in other corporations incorporated in this state and paying taxes on its capital stock in this state, as indicated or measured by the amount of profit made, either declared in dividends or carried into surplus or sinking fund; and when the same shall have been so truly estimated and appraised they shall forthwith forward to the commissioner of revenue a certificate thereof, accompanied by a copy of their said oath or affirmation, signed by them and attested by magistrate or other person duly qualified to administer the same.

3. *Deductions made.* Every such corporation may also show a deduction from the total amount of its capital stock, surplus, and undivided profits, the total amount of its actual investment in bonds of this state, and of the United States, and of the Federal farm loan bank, and bonds of the joint-stock land bank, which have been held as a continuing investment by such corporation for a period of not less than three months prior to the day on which such report is required by law to be made.

4. *Appraisal revised.* If the commissioner of revenue is not satisfied with the appraisement and valuation so made and returned, he is hereby authorized and empowered to make a valuation thereof, based upon the facts contained in the report herein required or upon any information within his possession, and to settle an account on the valuation so made by him for taxes, penalties, and interest due the state thereon, of which such settlement immediate notice shall be given to such corporation by the commissioner of revenue with the right to the company dissatisfied with any settlement so made against it to appeal to the superior court in term-time of the county in which such company has its principal place of business in this state, and thence to the supreme court of this state.

5. *Appeal allowed.* But before such company shall be allowed to exercise the right of appeal it shall, within twenty days after notice of such settlement, file with the commissioner of revenue exceptions to the particulars to which it objects, and the grounds thereof, and the commissioner of revenue shall hear said exceptions, after ten days notice of such hearing given by the commissioner to said company; and if he shall overrule any of said exceptions, then such company, if it desires to appeal to said superior court, shall, within ten days thereafter, give notice to the commissioner of revenue of such appeal to said superior court, and the commissioner shall thereupon transmit to said superior court a record of said settlement, with the exceptions of the company thereto, and all decisions thereon, and all papers and evidence considered in making said decision. The said cause shall be placed on the civil docket of said superior court, and shall have precedence of all other civil actions, and shall be tried under the same rules and regulations as are prescribed for the trial of other civil causes. The cause shall be entitled, "State of North Carolina, on the relation of the commissioner of revenue, against such company." Either party may appeal to the supreme court from the judgment of the superior court, under the same rules and

regulations as are prescribed by law for other appeals, except that the state of North Carolina, if it shall appeal, shall not be required to give an undertaking or make any deposit to secure the cost of such appeal; and the supreme court may advance the cause on their docket so as to give the same a speedy hearing.

6. *Effect of failure to report.* In the event of the neglect or refusal of the officers of any corporation, company, joint-stock association, or limited partnership for a period of sixty days to make the report and appraisement to the commissioner of revenue as herein provided, it shall be the duty of the commissioner of revenue to estimate a valuation of the capital stock of such defaulting corporation, company, joint-stock association, or limited partnership, and settle an account for taxes, penalty, and interest thereon, from which settlement an appeal may be made to the superior court of the county in which the corporation has its principal place of business.

7. *Disclosure of reports.* The commissioner of revenue is forbidden to divulge or make public any report of a corporation required to be made to him by this section. The commissioner of revenue shall prepare and keep a record book, upon which he shall enter a correct list of all the corporations and banks which he has assessed for taxation, and said record shall show the assessed valuation placed upon same by him: Provided, that the reports required to be made by this section may be examined, upon application, by the solicitor of the state for the district in which the corporation has its principal office, or in any investigation by the board of commissioners of a county the reports of corporations having their principal office in such county may be examined upon order of the board of county commissioners or their authorized representative.

1921, c. 38, s. 43.

945. Officers and salaries reported. 1. *Who must report.* In addition to the information required by the preceding section to be reported to the commissioner of revenue by domestic corporations, all corporations, both domestic and foreign, doing business in this state and required by any section of the revenue and machinery acts to make report to the commissioner of revenue, and every person, firm, or company not incorporated, including the state auditor and the disbursing officer of every state institution or any agency receiving aid from the state government, shall

be required to report to the commissioner of revenue the names and place of residence of all officers and employees of such corporations, persons, firms, or companies not incorporated, who were paid by such corporations, persons, firms, or companies not incorporated, salaries, wages, fees, or commissions for the twelve months ending January first, nineteen hundred and twenty-one, and annually thereafter, during the month of January for the preceding calendar year, in excess of one thousand dollars for unmarried persons, and in excess of one thousand five hundred dollars for married persons and widows and widowers having minor child or children, and the total amount of such compensation for said period.

2. *Penalty for failure.* All such corporations shall be liable for penalties provided in section 82 of the Revenue Act (herein 897) for failure to make reports as required by this section. Every person, firm, or company not incorporated failing to comply with the provisions of this section shall be liable for the payment of the tax upon such income as they failed to report as required by this section: Provided, that if a person, firm, company, or corporation is without knowledge that the persons to whom salaries, wages, fees, or commissions have been paid is married or unmarried, and is unable to ascertain such fact in each case reported, the names of such persons who receive salaries, wages, fees, or commissions in excess of the minimum exemption shall be reported.

3. *Investigation as to incomes.* It shall be the duty of the commissioner of revenue to have his traveling auditors make diligent investigation if all parties liable for an income tax have listed the same, and it shall also be the duty of the commissioner of revenue to have investigated the reports and records of the collectors of internal revenue in this state, in so far as the same may be available under the act of congress, to the end that all parties liable for income tax in this state shall be duly charged therewith.

4. *Information not divulged.* The commissioner of revenue is forbidden to divulge or make public the information required to be reported in this section, but it shall be his duty to furnish the information so reported to the registers of deeds of the several counties of the state, whose duty it shall be to compute the income tax on all such incomes liable for income tax within their respective counties and charge the same upon the tax books:

Provided, that the reports required to be made by this section may be examined, upon application, by the solicitor of the state for the district in which the corporation has its principal office, or in any investigation by the board of commissioners of a county the reports of corporations having their principal office in such county may be examined upon order of the board of county commissioners or their authorized representative.

1921, c. 38, s. 43a.

946. Foreign corporations not exempt. Nothing in this act shall be construed to exempt from taxation at its real value any property situate in the state belonging to any foreign corporation.

1921, c. 38, s. 44.

947. Tax on building and loan associations. The secretary of each building and loan association organized and conducting business in this state shall list with the local assessor any tangible real and personal property owned by such association on the first day of May, including cash on hand on that date. Each and every such association shall report to the commissioner of revenue on May first the amount of such return to the list-taker, and shall also report the actual value of all shares of stock of such association, and shall deduct from the actual value of all shares the total loans made by such association. No other tax than the ad valorem tax herein provided for and the privilege tax under section 60 of the Revenue Act shall be charged or levied on said association or on the shares therein.

1921, c. 38, s. 45.

948. Foreign building and loan associations. All foreign building and loan associations doing business in this state shall list for taxation with the commissioner of revenue, through its agent, its stock held by citizens of this state in the county, city, or town where the owners of said stock reside. In listing said stock for taxation, the withdrawal value as fixed by the by-laws of each company shall be furnished to the list-taker, and the stock shall be valued for taxation as other money investments of citizens of this state. Any association or officer of said association doing business in this state who shall fail or refuse to so list shares owned by citizens of this state for taxation shall be barred from

doing business in this state; and any local officer or other person who shall collect dues, assessments, premiums, fines, or interest from any citizen of this state for any such association which has failed or refused to list for taxation the stock held by citizens of this state shall be guilty of a misdemeanor and subject to fine or imprisonment, or both, in the discretion of the court. All of said taxes shall be paid by the association listing said stock.

1921, c. 38, s. 48.

949. Valuation certified to register of deeds. The commissioner of revenue shall, on or before September first, certify to the register of deeds of the county in which such corporation, joint-stock association, limited partnership, or company whatsoever has its principal office or place of business the total value of the stock of such corporation, joint-stock association, limited partnership, or company whatsoever as determined in the preceding sections. The corporation, joint-stock association, limited partnership, or company whatsoever shall pay the county, township, town, or city taxes upon the valuation so certified by the commissioner of revenue.

1921, c. 38, s. 46.

950. Penalty for failure to report. If the said officers of any such limited partnership, joint-stock association, or corporation shall neglect or refuse to furnish the commissioner of revenue, on or before the first day of July of each and every year, with the report and appraisalment of capital stock as aforesaid, as required by the preceding section of this act, they shall be subject to a fine of fifty dollars, and it shall be the duty of the commissioner of revenue to add five per centum to the tax of said limited partnership, joint-stock association, or corporation for each and every year for which said report and appraisalment were not furnished, which percentage shall be settled and collected with the said tax in the usual manner of settling and collecting such taxes. If the officers of any such limited partnership, joint-stock association, or corporation, or any of them, shall intentionally fail to comply with section 43 of this act (herein 944) for three successive years, he or they shall be deemed guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of five hundred dollars and undergo imprisonment not exceeding one year, or both, or either, at the discretion of the court.

1921, c. 38, s. 47.

951. Bank taxation. 1. *Real estate listed for taxation.* Every bank, banking association, or savings institution (whether state or national), shall list its real estate in the county, city or town in which such real estate is located, for the purpose of county and municipal taxation.

2. *Shares listed.* Every such bank, banking association, or savings institution shall, during the month of May, list annually with the commissioner of revenue in the name and for its shareholders, all the shares of its capital stock, whether held by residents or nonresidents, at its market value on the first day of May, or, if it have no market value, then at its actual value on that day, from which market or actual value shall be deducted the assessed value of the real and personal property which such bank, banking association, or savings institution shall have listed for taxation in the county or counties wherein such real and personal estate is located.

3. *Value of shares.* The actual value of such shares, where such shares have no market value, shall be ascertained by adding together the capital stock, surplus, and undivided profits, and deducting therefrom the amount of real and personal property owned by said institution on which it pays tax, and dividing the net amount by the number of shares in said institution. There may be deducted from the items of surplus and undivided profits an amount not exceeding five (5) per cent. of the bills receivable of said institution to cover bad and insolvent debts, provided the cashier of the bank shall make an affidavit that in his opinion the deduction asked for above, not exceeding five per cent., is reasonable. There shall be also deducted from the items of surplus and undivided profits, investments by such banks in bonds of this state, of the United States Government, of the Federal Farm Loan Banks and of the Joint Stock Land Banks at the actual cost price of said bonds to the bank claiming such deductions. To be entitled to this deduction, it must be shown by the reports of such bank that the bonds were purchased and paid for in full at least ninety days before the first day of May. If the commissioner of revenue shall have reason to believe that the market or actual value as given in is not its true value, he shall ascertain such true value by such examination and investigation as to him seems proper, and change the value as given in to such an amount as he ascertains the true value to be, which action on the part of

the commissioner of revenue may be reviewed by the superior court by an action brought against the commissioner in his official capacity by the party aggrieved. But no action shall lie until all taxes admitted by such aggrieved party to be due shall have been paid or tendered. The value of the capital stock of all such banks, as found by the commissioner of revenue, shall be certified to the county and city in which the bank is located, except that as to banks having one or more branches the commissioner shall make an allocation of the value of the capital stock as between the parent and branch banks in proportion to the deposits of the parent and branch banks and certify the allocated values so found to the counties and cities in which the parent and branch banks are located.

4. *Tax on shares paid as other taxes.* The taxes so assessed upon the shares of any such bank, company, or association shall be paid by the cashier, secretary, treasurer, or proper accounting officer thereof, and in the same manner and at the same time as other taxes are required to be paid in such county, special school district or city; in default of such payment such cashier, secretary, treasurer, or other accounting officer as well as such bank, company, or association shall be liable for such taxes, and in addition, for a sum equal to ten per centum thereof. Any taxes so paid upon any such shares may, with the interest thereon, be recovered from the owners thereof by the bank, company, association, or officer paying them, or may be deducted from the dividends accruing on such shares. The taxation of shares of any such bank, banking association, or savings institution shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of this state, whether such taxation is for state, county, school, or municipal purposes.

1921, c. 38, s. 42; Ex. 1921, c. 107, s. 1.

ART. 15. PUBLIC-SERVICE CORPORATIONS OTHER THAN RAILROADS.

952. Telegraph companies. Every joint-stock association, company, copartnership, or corporation, whether incorporated under the law of this state or any other state or of any foreign nation, engaged in transmitting to, from, through, in or across the state of North Carolina telegraph messages shall be deemed and held

to be a telegraph company; and every such telegraph company shall annually, between the first day of May and the twentieth day of May, make out and deliver to the commissioner of revenue a statement, verified by oath of the officer or agent of such company making such statement, with reference to the thirtieth day of April next preceding showing:

First. The total capital stock of such association, company, copartnership, or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the thirtieth day of April next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, copartnership, or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership, or corporation situated outside the state of North Carolina and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside the state of North Carolina; (c) the length of the lines and wire mileage within each of the counties, townships, and incorporated towns within the state of North Carolina.

1921, c. 38, s. 49.

953. Telephone companies. Every telephone company doing business in this state, whether incorporated under the laws of this state or any other state, or of any foreign nation, shall annually, between the first day of May and the twentieth day of May, make

out and deliver to the commissioner of revenue a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the thirtieth day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership, or corporation invested in the operation of such telephone business.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the thirty-first day of March next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, copartnership, or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership, or corporation situated outside the state of North Carolina, and not used directly in the conduct of the business with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside the state of North Carolina; (c) the length of the lines and wire mileage within each of the counties, townships, and incorporated towns within the state of North Carolina.

1921, c. 38, s. 50.

954. Express companies. Every joint-stock association, company, copartnership, or corporation, incorporated or acting under the laws of this state or any other state or any foreign nation, engaged in carrying to, from, through, in, or across this state, or any part thereof, money packages, gold, silver plate, merchandise, freight or other articles, under any contract, expressed or implied,

with any railroad company or the managers, lessees, agents, or receivers thereof (provided such joint-stock association, company, copartnership, or corporation is not a railroad company), shall be deemed and held to be an express company within the meaning of this act; and every such express company shall annually, between the first day of May and the twentieth day of May, make out and deliver to the commissioner of revenue a statement, verified by the oath of the officer or agent of such association, company, copartnership, or corporation making such statement, with reference to the thirtieth day of April next preceding, showing:

First. The total capital stock or capital of said association, copartnership, or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share; and in case no shares of capital stock are issued, in what manner the capital stock thereof is divided, and in what manner such holdings are evidenced.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the thirtieth day of April next preceding; and if such shares have no market value, then the actual value thereof; and in case no shares of stock have been issued, state the market value, or the actual value in case there is no market value, of the capital thereof, and the manner in which the same is divided.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by the said association, company, copartnership, or corporation, and subject to local taxation within the state of North Carolina, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the improvements thereon, owned by the association, company, copartnership, or corporation situated outside the state of North Carolina, and not used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) Total length of the lines or routes over which such association, company, copartnership, or corporation trans-

ports such merchandise, freight, or express matter; (b) the total length of such lines or routes as are outside the state of North Carolina; (c) the length of such lines or routes within each of the counties and townships within the State of North Carolina.

1921, c. 38, s. 51.

955. Sleeping-car companies. 1. *Report made.* Every joint-stock association, company, copartnership, or corporation incorporated or acting under the laws of this or any other state, or of any foreign nation, and conveying to, from, through, in, or across this state, or any part thereof, passengers or travelers in palace cars, drawing-room cars, sleeping cars, dining cars, or chair cars, under any contract, express or implied, with any railroad company or the managers, lessees, agents, or receivers thereof, shall be deemed and held to be a sleeping-car company for the purposes of this act, and shall hereinafter be called "sleeping-car company"; and every such sleeping-car company doing business in this state shall annually, between the first day of May and the twentieth day of May, make out and deliver to the commissioner of revenue a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the thirtieth day of April next preceding, showing:

First. The total capital stock of such sleeping-car company, invested in its sleeping-car business.

Second. The number of shares of such capital stock devoted to the sleeping-car business issued and outstanding, and the par or face value of each share.

Third. Under the laws of what state it is incorporated.

Fourth. Its principal place of business.

Fifth. The names and postoffice addresses of its president and secretary.

Sixth. The actual cash value of the shares of such capital stock devoted to its sleeping-car business on the thirtieth day of April next preceding such report.

Seventh. The real estate, structures, machinery, fixtures, and appliances owned by said sleeping-car company and subject to local taxation within this state, and the location and assessed value thereof in each county within this state where the same is assessed for local taxation.

Eighth. All mortgages upon the whole or any part of its property, and the amounts thereof devoted to its sleeping-car business.

Ninth. (a) The total length of the main line of railroad over which cars are run; (b) the total length of so much of the main lines of railroad over which the said cars are run outside of the state of North Carolina; (c) the length of the lines of railroad over which said cars are run within the state of North Carolina: Provided, that where the railroads over which said cars run have double tracks, or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but single tracks; and in case it shall be required, such statement shall show in detail the number of miles of each or any particular railroad or system within the state.

2. *State tax paid.* When the assessment shall have been made by the commissioner of revenue in accordance with section 57 (herein 960), he shall thereupon notify the officer attesting such report of the amount assessed against it, and such sleeping-car company shall have thirty days within which to appear and make objection, if any it shall have, to said assessment. If no objection be made within thirty days, the amount shall be credited to the state treasurer, who shall thereupon send by letter to the officer attesting such report a bill for the state taxes upon said assessment, and such sleeping-car company shall have thirty days within which to pay said taxes.

3. *County tax.* The commissioner of revenue shall certify to the county commissioners of the several counties through which such cars are used the value of the property of such sleeping-car company within such county in the proportion that the number of miles of railroad over which such cars are used in said county bears to the number of miles of railroad over which such cars are used within the state, together with the name and postoffice address of the officer attesting such report of such sleeping-car company, with the information that tax bills, when assessed, are to be sent him by mail; and such value, so certified, shall be assessed and taxed the same as other property within said county. And when the assessment shall have been made in such county, the sheriff or county tax collector shall send to the address given by the commissioner of revenue to the county commissioners a bill for the total amount of all taxes due to such county, and such

sleeping-car company shall have sixty days thereafter within which to pay said taxes; and upon failure of and refusal to do so, such taxes shall be collected the same as other delinquent taxes are, together with a penalty of fifty per cent added thereto, and costs of collection.

1921, c. 38, s. 52.

956. Refrigerator and freight-car companies. Every firm, person, or corporation owning refrigerator or freight cars operated over or leased to any railroad company in this state or operating in the state shall be taxed in the same manner as hereinbefore provided for the taxation of sleeping-car companies, and the collection of the tax thereon shall be followed in assessing and collecting the tax on the refrigerator and freight cars taxed under this section: Provided, if it appear that the owner does not lease the cars to any railroad company, or make any contract to furnish it with cars, but they are furnished to be run indiscriminately over any lines on which shippers or railroad companies may desire to send them, and the owner receive compensation from each road over which the cars run, the commissioner of revenue shall ascertain and assess the value of the average number of cars which are in use within the state as a part of the necessary equipment of any railroad company for the year ending April thirtieth next preceding, and the tax shall be computed upon this assessment.

1921, c. 38, s. 53.

957. Street railways, waterworks, etc. Every street railway company, waterworks company, electric light and power company, gas company, ferry company, bridge company, canal company, and other corporations exercising the right of eminent domain shall annually, between the first and twentieth of May, make out and deliver to the commissioner of revenue a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the copartnership or corporation, showing:

First. The total capital stock of such association, company, copartnership, or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the thirty-first day of March next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, copartnership, or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership, or corporation situate outside of the state of North Carolina, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situate.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of the lines within each of the counties and townships within the state of North Carolina.

1921, c. 38, s. 54.

958. Additional information required. Upon the filing of the statements required in the preceding sections the commissioner of revenue shall examine them and each of them; and if he shall deem the same insufficient, or in case he shall deem that other information is requisite, he shall require such officer to make such other and further statements as said commissioner may call for. In case of the failure or refusal of any association, company, copartnership, or corporation to make out and deliver to the commissioner of revenue any statement or statements required by this act, such association, company, copartnership, or corporation shall forfeit and pay to the state of North Carolina one hundred dollars (\$100) for each additional day such report is delayed beyond the twentieth day of May, to be sued for and recovered in any proper form of action in the name of the state of North Carolina on the relation of the commissioner of revenue, and such penalty, when collected, shall be paid into the general fund of the state.

1921, c. 38, s. 55.

959. Statements examined. The commissioner of revenue shall thereupon value and assess the property of each association, company, copartnership, or corporation in the manner hereinafter set forth, after examining such statements and after ascertaining the value of such properties therefrom, and upon such other information as they may have or obtain. For that purpose he may require the agents or officers of said association, company, copartnership, or corporation to appear before him with such books, papers, and statements as he may require, or he may require additional statements to be made to him, and may compel the attendance of witnesses in case he shall deem it necessary to enable him to ascertain the true cash value of such property.

1921, c. 38, s. 56.

960. Manner of assessment. 1. The commissioner of revenue shall first ascertain the true cash value of the entire property owned by the said association, company, copartnership, or corporation from said statements or otherwise for that purpose, taking the aggregate value of all the shares of capital stock, in case shares have a market value, and in case they have none, taking the actual value thereof or of the capital of said association, company, copartnership, or corporation in whatever manner the same is divided, in case no shares of capital stock have been issued: Provided, however, that in case the whole or any portion of the property of such association, company, copartnership, or corporation shall be encumbered by a mortgage or mortgages, he shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock, or to the value of the capital in case there should be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, copartnership, or corporation.

2. The commissioner of revenue shall, for the purpose of ascertaining the true cash value of property within the state of North Carolina, next ascertain from such statements or otherwise the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situated within the state of North Carolina, and not specifically used in the general business of such associations, companies, copartnerships, or corporations, which assessed value for taxation shall be by him

deducted from the gross value of the property as above ascertained.

3. The commissioner of revenue shall next ascertain and assess the true cash value of the property of the associations, companies, copartnerships, or corporations within the state of North Carolina by taking as a guide, as far as practicable, the proportion of the whole aggregate value of said associations, companies, copartnerships, or corporations as above ascertained, after deducting the assessed value of such real estate without the state which the length of lines of said associations, companies, copartnerships, or corporations, in the case of telegraph and telephone companies within the state of North Carolina, bears to the total length thereof, and in the case of express companies and sleeping-car companies the proportion shall be the proportion of the whole aggregate value, after such deduction, which the length of lines or routes within the state of North Carolina bears to the whole length of lines or routes of such associations, companies, copartnerships, or corporations, and such amount so ascertained shall be deemed and held as the entire value of the property of said associations, companies, copartnerships, or corporations within the state of North Carolina.

4. From the entire value of the property within the state so ascertained there shall be deducted by the commissioner the assessed value for taxation of all real estate, structures, machinery, and appliances within the state, and subject to local taxation in the counties as hereinbefore described, in sections 51, 52, 53, 54, 55, and 56 of this act (herein 954, 955, 956, 957, 958 and 959), and the residue of such value so ascertained after deducting therefrom the assessed value of such local properties, shall be by him assessed to said association: Provided, the commissioner of revenue shall also assess the value for taxation of all structure, machinery, appliances, pole lines, wire and conduit of telephone and telegraph companies within the state subject to local taxation, but land and buildings located thereon owned by said companies shall be assessed in like manner and by the same taxing officials as though such property was owned by individuals in this state.

1921, c. 38, s. 57.

961. Value per mile ascertained. The commissioner of revenue shall thereupon ascertain the value per mile of the property within the state by dividing the total value as above ascertained, after deducting the specific properties locally assessed within the state,

by the number of miles within the state, and the result shall be deemed and held as value per mile of the property of such association, company, copartnership, or corporation within the state of North Carolina: Provided, the value per mile of telephone companies shall be determined on a wire mileage basis.

1921, c. 38, s. 58.

962. Total value for each county. The commissioner of revenue shall thereupon, for the purpose of determining what amount shall be assessed by him to said association, company, copartnership, or corporation in each county in the state, through, across, and into or over which the lines of said association, company, copartnership, or corporation extends, multiply the value per mile, as above ascertained, by the number of miles in each such counties as reported in said statements or as otherwise ascertained, and the result thereof shall be certified to the chairman of the board of county commissioners, respectively, of the several counties through, into, over, or across which the lines or routes of said association, company, copartnership, or corporation extend. All taxes due the state from any corporation taxed under the preceding sections shall be paid by the treasurer of each company direct to the state treasurer.

1921, c. 38, s. 59.

963. Payment of tax enforced. In case any such association, company, copartnership, or corporation as named in this act shall fail or refuse to pay any taxes assessed against it in any county in this state, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the state of North Carolina by the solicitors of the different judicial districts of the state on the relation of the county commissioners of the different counties of this state, and the judgment in the said action shall include a penalty of fifty per cent of the amount of taxes as assessed and unpaid, together with reasonable attorney's fees for the reduction of such action, which action may be prosecuted in any county into, through, over or across which the lines or routes of any association, company, copartnership, or corporation shall extend, or in any county where such association, company, copartnership, or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership, or corporation shall have refused to pay the whole of the taxes assessed against the same by the commissioner of

revenue, or in case such association, company, copartnership, or corporation shall have refused to pay the taxes or any portion thereof assessed to it in any particular county or counties, such action may include the whole or any portion of the taxes so unpaid in any county or counties; but the attorney-general may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions to each separate county or adjoining counties, as he may prefer. All collection of taxes for or on account of any particular county made in any such suit or suits shall be accounted for as a credit to the respective counties for or on account of which such collections were made at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the state, and upon such settlement being made, the treasurers of the several counties shall at their next settlement enter credits upon the proper duplicates in their offices, and at the next settlement with such county report the amount so received by him in his settlement with the state, and proper entries shall be made with reference thereto: Provided, that in any such action the amount of assessment fixed by the commissioner of revenue and apportioned to such county shall not be controverted.

1921, c. 38, s. 60.

ART. 16. RAILROADS.

964. Commissioner of revenue to appraise. The commissioner of revenue shall appraise and assess railroad, canal, and steamboat companies, and other companies exercising the right of eminent domain.

1921, c. 38, s. 61.

965. Returns to be made by officers. The president, secretary, superintendent, or other principal accounting officer within this state, of every railroad, telegraph, telephone, street railway company, whether incorporated by the laws of this state or not, shall, at such date as real estate is required to be assessed for taxation, return to the commissioner of revenue for assessment and taxation, verified by the oath or affirmation of the officer making the return, all the following described property belonging to such corporation within this state, viz.: The number of miles of such railroad lines in each county in this state, and the total number of miles in this state, including the roadbed, right of way, and superstructures thereon, main and sidetrack depot buildings, and depot grounds, section and tool houses, and the land upon which

situated and necessary to their use; water stations and land, coal chutes and land, and real estate and personal property of every character necessary for the construction and successful operation of such railroad, or used in the daily operation, whether situated on the charter right of way of the railroad or on additional land acquired for this purpose, except as provided below, including, also, if desired by the commissioner of revenue, pullman or sleeping cars or refrigerator cars owned by them or operated over their lines: Provided, however, that all machine and repair shops, general office buildings, storehouses, and contents located outside of the right of way, and also real and personal property other than the property as returned above to the commissioner of revenue, shall be listed for purposes of taxation by the principal officers or agents of such companies with the list-takers of the county where the real and personal property may be situated in the manner provided by law for the listing and valuation of real and personal property. A list of such property shall be filed by such company with the commissioner of revenue. It shall be the duty of the register of deeds, if requested so to do by the commissioner of revenue, to certify and send to the commissioner a statement giving a description of the property mentioned in the foregoing proviso, and showing the assessed valuation thereof, which value shall be deducted from the total value of the property of such railroad company as arrived at by the commissioner, in accordance with section 66 (herein 970), before the apportionment is made to the counties and municipalities. The registers of deeds shall also certify to the commissioner the local rate of taxation for county purposes as soon as the same shall be determined, and such other information obtained in the performance of the duties of their office as the said commissioner shall require of them; and the mayor of each city or town shall cause to be sent to the said commissioner the local rate of taxation for municipal purposes.

1921, c. 38, s. 62.

966. Railroad companies to file maps. Every railroad company operating in this state shall also be required to file with the commissioner of revenue a map or blue-print showing the location within the corporate limits of every incorporated city or town of its main line of road, and its length, together with location of its right of way, not exceeding one hundred feet in width, and the location and value of all real estate owned by any such company within the limits of any such city or town, and not included in

the right of way so designated. Every such company shall also report the value of any and all buildings and structures within the limits of any such city or town, whether on or off its right of way, and the commissioner shall find the value of all such real estate, buildings, and structures, and shall certify to such city or town the value of same, in addition to the value per mile of so much of its main line as may be located within such city or town, for ad valorem taxation.

1921, c. 38, s. 62a.

967. Rolling stock reported. The movable property belonging to a railroad company shall be denominated for the purpose of taxation "rolling stock." Every person, company, or corporation owning, constructing, or operating a railroad in this state shall, in the month of May, annually return a list or schedule to the commissioner of revenue, which shall contain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping cars and dining cars, express cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars, and the value thereof, and a statement or schedule, as follows: (1) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (2) the amount of capital stock paid up; (3) the market value, or if no market value, then the actual value of shares of stock; (4) the length of line operated in each county and total in the state; (5) the total assessed value of all tangible property in the state; (6) and, if desired, all the information heretofore required to be annually reported by section five thousand two hundred and ninety-one of the revisal. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the commissioner, and with reference to amounts and value on the first day of May of the year of which the return is made.

1921, c. 38, s. 63.

968. Tangible and intangible property assessed separately. (a) At such dates as real estate is required to be assessed for taxation, the commissioner of revenue shall first determine the value of the tangible property of each division or branch of such railroad of rolling stock and all other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for

depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property.

(b) He shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

(c) The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the commissioner of revenue shall certify, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city, or town; all taxes due the state from any railroad company shall be paid by the treasurer of each company directly to the state treasurer within thirty days after the first day of July of each year; and upon failure to pay the state treasurer as aforesaid, he shall institute an action to enforce the same in the county of Wake or any other county in which such railroad is located, adding thereto twenty-five per centum of the tax. The board of county commissioners of each county through which said railroad passes shall assess against the same only the tax imposed for county, township, or other taxing district purposes, the same as is levied on other property in such county, township, or special taxing districts.

1921, c. 38, s. 64.

969. Railroad partly in state; how assessed. When any railroad has part of its road in this state and part thereof in any other state, the said commissioner shall ascertain the value of railroad track, rolling stock, and all other property liable to assessment by the commissioner of revenue of such company as provided in the next preceding section, and divide it in the proportion to the length such main line of road in this state bears to the whole length of such main line of road, and determine the value in this state accordingly: Provided, the commissioner shall, in valuing the fixed property in this state, give due consideration to

the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this state, and any other factor which would give a greater or less value per mile of road in this state than the average value for the entire system. On or after the first Monday in July the commissioner shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The commissioner may, if he see fit, require all argument and communications to be presented in writing. Provided further, that railroads subject to the provisions of this act shall in every instance have the same right of appeal from any assessment, ruling, finding, order or other action by the commissioner of revenue as is provided for and given to other corporations in section forty-three (944) of this act, and under the same rules and conditions prescribed in the said section.

1921, c. 38, s. 65; Ex. Session, 1921, c. 103, s. 1.

970. Leased railroads. If the property of any railroad company be leased or operated by any other corporation, foreign or domestic, the property of the lessor or company whose property is operated shall be subject to taxation in the manner herein-before directed; and if the lessee or operating company, being a foreign corporation, be the owner or possessor of any property in this state other than which it derives from the lessor or company whose property is operated, it shall be assessed in respect to such property in like manner as any domestic railroad company.

1921, c. 38, s. 66.

971. Assessment in stock-law territory. The commissioner of revenue shall assess the value of real estate belonging to any railroad company within stock-law territory in this state at the same time that he assesses railroad property for general purposes.

Every railroad company shall report to the commissioner of revenue, on blanks to be furnished by him mileage of such railroad within the stock-law territory, width of right of way, weight of rails, value of rails and ties, number, description, and value of all structures within the stock-law territory, and all other information necessary to enable the commissioner to ascertain the value of such real estate. After assessment shall be made it shall not be changed until the year for the assessment of real property for general tax purposes, except that the commissioner shall correct any assessment of real property on which any struct-

ure of over one hundred dollars in value may have been erected, or on which any structure of like value may have been destroyed, as the value of the real estate may be affected thereby.

1907, c. 459.

972. Powers in assessing. The commissioner of revenue shall have power to summon and examine witnesses and require that books and papers shall be presented to him for the purpose of obtaining such information as may be necessary to aid in determining the valuation of any railroad company. Any president, secretary, receiver, or accounting officer, servant or agent of any railroad or steamboat company having any portion of its property or roadway in this state who shall refuse to attend before the commissioner when required to do so, or refuse to submit to the inspection of the commissioner any books or papers of such railroad company in his possession, custody, or control, or shall refuse to answer such questions as may be put to him by said commissioner, or order, touching the business or property, moneys and credits, and the value thereof, of said railroad company, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be confined in the jail of the county not exceeding thirty days, and shall be fined in any sum not exceeding five hundred dollars and costs; and any president, secretary, accounting officer, servant or agent aforesaid, so refusing as aforesaid, shall be deemed guilty of contempt of such commission, and may be confined, by order of said commission, in the jail of the proper county until he shall comply with such order and pay the cost of his imprisonment.

1921, c. 38, s. 67.

973. Canal and steamboat companies. The property of all canal and steamboat companies in this state shall be assessed for taxation as above provided for railroads. In case any officer fails to return the property provided in this section, the commissioner of revenue shall ascertain the length of such property in this state, and shall assess the same in proportion to the length at the highest rate at which property of that kind is assessed by them.

1921, c. 38, s. 68.

974. Valuations certified. The commissioner of revenue shall, upon completion of the assessment directed in the preceding sections, certify to the register of deeds of the county the total valuations as hereinbefore determined and apportioned by the

commission, and in case of corporate excess, to the county in which the corporation has its principal place of business, and the board of county commissioners shall assess against the same tax imposed for county, township, or other tax district purposes, the same as is levied on other property in such county, township, or special taxing districts; it shall be paid to the sheriff or tax collector of the county.

1921, c. 38, s. 67a.

975. Assessments reviewed. Any taxpayer owning property assessed originally by the commissioner of revenue may make application to the commissioner for a review of the assessment of its property in the same manner herein provided for complaint by property owners before the county boards, and the commissioner may hear and determine such complaints.

1921, c. 38, s. 28g.

SUBCHAPTER IV. STATE DEPARTMENT OF REVENUE.

976. Department created; powers and duties transferred from state tax commission. From and after the first day of May, one thousand nine hundred and twenty-one, all the powers and duties imposed by any act of law, including revenue and machinery acts, enacted by the present session of the General Assembly, upon the State Tax Commission, shall be transferred to and imposed upon a department to be known as the State Department of Revenue, created by this act, to be administered by the Commissioner of Revenue, to be appointed as provided in this act. All such powers and duties, except as otherwise provided herein, shall devolve upon the Commissioner of Revenue, and wherever in the revenue laws of the State the words "State Tax Commission" are used such words shall, after May first, one thousand nine hundred and twenty-one, be held to mean Commissioner of Revenue, except as otherwise provided in this act.

1921, c. 40, s. 1.

977. Office created; appointment and term of office. There is hereby created the office of Commissioner of Revenue, to be appointed by the Governor, by and with the advice and consent of the Senate, and if such appointment is made when the Senate is not in session, confirmation may be by the Senate at the next session. The term of office shall be for four years from and after the first day of May, one thousand nine hundred and twenty-one, and the succeeding commissioner of revenue shall be nominated

and elected in the year one thousand nine hundred and twenty-four, in the manner provided for the nomination and election of other State officers, and quadrennially thereafter.

1921, c. 40, s. 2.

978. Oath of office. The commissioner of revenue shall take and subscribe the constitutional oath of office to be filed with the secretary of state.

1921, c. 38, s. 2.

979. General supervision of tax system. It shall be the duty of the commissioner of revenue, and he shall have power and authority to have general supervision of the system of taxation throughout the state, and to have and exercise general supervision over the administration of all assessment and tax laws, over all county, township, and city tax assessors and boards of equalization, to the end that all assessments of property, real, personal, and mixed, be made relatively just and uniform, and at its true value in money; to require all county, township, and city assessors, boards of equalization and levy and assessment officers, under penalty of forfeiture and removal from office as such assessors or boards, to assess all property of every kind and character at its true value in money.

1. To confer with and advise assessing officers as to their duties under this act, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations, and individuals failing to comply with this act; to prefer charges to the Governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessments and taxation; and in the execution of these powers the said commissioner of revenue may call upon the attorney-general or any prosecuting attorney in the state to assist him, and any person or officer who fails or refuses to comply with any lawful order of the commissioner of revenue shall be subject to a penalty or forfeiture of one hundred dollars, the same to be imposed by order of said commissioner; and, in addition, any such person or officer so offending shall be liable to punishment by said commissioner as for contempt.

2. At least thirty days previous to the date fixed for listing taxes, to prepare a pamphlet for the instruction of tax assessors. Said pamphlet shall, in as plain terms as possible, explain

the proper working of the tax laws of the state, and shall call particular attention to any points in the administration of the laws which have seemed to be overlooked or neglected. He shall advise the assessors of the practical working of the laws, and explain any points which seem to be intricate and upon which assessors may differ.

3. To receive complaints as to property liable to taxation that has not been assessed or of property that has been fraudulently or improperly assessed through error or otherwise, and to investigate the same, and to take such proceedings and to make such orders as will correct the irregularity complained of, if found to exist.

4. To see that each county in the state be visited as often as is necessary, to the end that all complaints concerning the law of assessment and taxation may be heard; that information concerning its workings may be collected; that all assessing and taxation officers comply with the law, and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

5. To require from any registers of deeds, clerks of courts, mayors and clerks of towns, or any other officer in this state, on forms prescribed by the commissioner of revenue, such annual or other reports as shall enable said commissioner to ascertain the assessed valuations of all property listed for taxation throughout the state under this act, the amount of taxes assessed, collected, and returned delinquent, and such other matters as the commissioner may require, to the end that he may have complete and statistical information as to the practical operation of this act; that every such officer mentioned in this section who shall willfully neglect or refuse to furnish any report required by the commissioner for the purposes of this act, or who shall willfully and unlawfully hinder, delay or obstruct said commissioner in the discharge of his duties, shall forfeit and pay one hundred dollars for each offense, to be recovered in an action in the name of the state. A delay of ten days to make and furnish such report shall raise the presumption that the same was willful.

6. To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same is made known by published reports and statistics, and can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with

experience and observation of our own laws, to recommend to the Legislature at each regular session thereof such amendments, changes or modifications of our revenue laws as seem proper and necessary to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of public revenues.

7. To further report to the Legislature at each regular session thereof, or at such other times as the Legislature may direct, the whole amount of taxes collected in the State for all purposes, classified as to state, county, township, and municipal purposes, with the sources thereof; the amount lost, the cause of the loss, the proceedings of said commissioner, and such other matters of information concerning the public revenues as he may deem of public interest.

8. To discharge such other duties as are or may be prescribed by law.

1921, c. 38, s. 3.

980. Revision of revenue laws. In addition to the other duties of the commissioner of revenue, it shall be his duty to prepare for the legislative committees of succeeding General Assemblies such revision of the revenue laws of the state as he may find by experience and investigation expedient to recommend, so that the same may be introduced in the General Assembly and available in printed form for consideration of its members within the first ten days of the session.

1921, c. 40, s. 5.

981. Access to books and papers; examination of witnesses. The commissioner of revenue shall have access to all books, papers, documents, statements, and accounts on file or of record in any of the departments of state. He shall have like access to all books, papers, documents, statements, and accounts on file or of record in counties, townships, and municipalities. He shall have the right to subpoena witnesses, which subpoena may be served by any person authorized to serve subpoenas from courts of record in this state; and the attendance of witnesses may be compelled by attachment, to be issued by any superior court upon proper showing that such witness has been properly subpoenaed, and has refused to obey such subpoena. The persons serving such subpoena shall receive the same compensation now allowed to sheriffs and other officers for serving subpoenas. He shall have the power to administer oaths and to examine witnesses under oath.

He shall have the right to examine books, papers, or accounts of any corporation, firm or individual owning property liable to assessment for taxes, general or specific, under the laws of this state; and any officer or stockholder of any such corporation, any member of any such firm, or any person or persons who shall refuse to permit such inspection, or neglect or fail to appear before said commissioner in response to his subpoena, or testify, as provided for in this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the state prison for a period not exceeding two years, or both such fine and imprisonment in the discretion of the court.

1921, c. 38, s. 7.

982. Annual report to governor. The commissioner of revenue shall, on or before the first day of January of each year, make an annual report to the governor of the state, setting forth the workings of the department of revenue during the preceding year, and containing the findings and recommendations of his department in relation to all matters of taxation. He shall cause two thousand copies of said report to be printed on or before the first day of the February succeeding the making of said report. One hundred copies of said report shall be placed at the disposal of the state librarian for distribution and exchange, and a copy of said report shall be forwarded by said commissioner to each member of the General Assembly as soon as printed.

1921, c. 38, s. 4.

983. Record of proceedings. The commissioner of revenue shall keep an accurate record of his official proceedings. Certified copies of his records, attested with his official seal, shall be received in evidence in all courts of the state with like effect as certified copies of other public records.

1921, c. 38, s. 6.

984. Clerical assistance, agents, etc. The commissioner of revenue may employ such additional clerks, agents, or other help as in his judgment he may deem necessary to put into proper execution the provisions of this act. The persons so selected shall hold office during the pleasure of the commissioner. The sum of twenty thousand dollars (\$20,000) per annum, or so much thereof as may be necessary, is hereby appropriated for the payment of the services of said clerks, agents, or other help.

1921, c. 38, s. 13.

985. Salary. The salary of the commissioner of revenue shall be five thousand five hundred dollars per annum, and necessary traveling expenses when traveling on official business, payable monthly in the same manner as other state officers.

1921, c. 40, s. 6.

986. Office room and equipment. The board of public buildings and grounds shall by division of office space, office furniture, supplies, etc., now occupied and used by the corporation commissioner and state tax commission, or otherwise, provide suitable office space and equipment for the department of revenue.

1921, c. 40, s. 4.

NOTE.

SHALL BOTH THE CORPORATION AND ITS SHAREHOLDERS PAY TAX UPON ITS CAPITAL STOCK?

The affirmative of this proposition is confidently urged as being not only fair, but also as being expressly commanded by the Constitution. With equal confidence and force, the question is answered in the negative, by those who contend that the Constitution requires all property to be taxed once, and that it does not require the same property to be taxed twice.

Subsection 21 of Sec. 40, Machinery Act of 1921, and the similar and corresponding section of each Machinery Act for many years have been severely criticized because they did not require persons who own shares of stock to list same for taxation, when the corporation itself was taxed with respect thereto.

One school of opinion has contended that this subsection constituted a clear violation of article V, section 3 of the Constitution which provides that "Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise." They contend that subsection 21 provides that there shall be listed for taxation the shares of stock of only those companies "which are not taxed through the corporation itself", and that these words serve to exempt from taxation practically, if not actually, the capital stock of all corporations (except banks, building and loan associations, and possibly a few others), organized under the laws of this state. They cite in support of this contention, *Belo v. Commissioners*, 82 N. C. 415, and *Board of Commissioners v. Blackwell*, 116 N. C. 441, 21 S. E. 423. They hold that the general assembly has failed to carry into effect the plain mandate of the constitution.

Others contend that sec. 3, article V requires shares of stock in a corporation to be taxed once at its full value in money; but that it does not require that they be taxed twice at full value. They hold that the constitution requires stocks to be taxed at full value; but that it leaves the method to the general assembly; and that if stocks be taxed at full value, it is immaterial whether the tax be imposed upon and collected from the corporation or from the stockholder. That if collected from either, the mandate of the constitution will have been obeyed. That if an attempt were made to collect the tax from each stockholder, the cost of collection would be great; that much would never be collected; that none would be collected from non-resident shareholders. Further, they say that if a share of stock be treated as an obligation of the corporation to the owner of the share, analagous to a debt, it would be subject to diminution, because the taxpayer may deduct from the sum of his solvent credits, the sum of his own indebtedness.

To avoid the expenses and losses inevitable upon any attempt to collect tax on corporate shares from their owners, the general assembly has wisely, they say, adopted a system of imposing upon the corporation liability for the tax upon its entire capital stock, regardless of the residence of the owners of the stock, regardless of their financial situation, and without deduction. They say that the general assembly has adopted the modern method of "collecting the tax at the source", and that under this system the capital stock of corporations (not exempt) is fully taxed, as the constitution requires; and that the state and its subdivisions receive the full amount of tax with the least possible loss; and at the smallest possible cost for collection. They say that the general assembly has devised a system by which everything of value incident to a corporation is assessed at its true value in money; and that the sum of all these values is the amount on which the corporation is required to pay tax to the state and to municipalities.

Sec. 43, Machinery Act 1921, (sec. 944) requires a report under oath from every corporation showing—

- (1) The total authorized capital stock.
- (2) The total authorized number of shares.
- (3) Number of shares of stock issued.
- (4) Par value of each share.
- (5) Amount paid into the treasury on each share.
- (6) Amount of capital stock paid in.

- (7) Amount of capital on which dividend was declared.
- (8) Date of each dividend during the year ending with the 1st of May.
- (9) Amount of each dividend.
- (10) Highest prices of sales of stock between 1st and 15th days of May; highest price of stock during the year; and the average price of sales of stock during the year.

Besides this information, the officer making the report must appraise the capital stock of the corporation "at its actual value in cash on the 1st day of May after deducting therefrom the assessed value of all real and personal property upon which the corporation pays tax, and the value of the shares of stock legally held and owned by such corporation, in other corporations incorporated in this state and paying taxes on its capital stock in this state."

The state is not concluded by this report, or by the assessment made by the corporation. It has ample authority to require and obtain any other information necessary to ascertain the true value of a corporation, including the capital stock, its property, real and personal, tangible and intangible, its good will, trade marks, and its going concern value.

Having the report from the corporation, and having obtained any other information necessary or desirable, the commissioner of revenue is required (Sec. 57, Machinery Act—herein 960), to "ascertain the true cash value of the entire property owned by the said association, company, copartnership or corporation, from said statements or otherwise for that purpose, taking the aggregate value of all the shares of capital stock, in case shares have a market value, and in case they have none, taking the actual value thereof; or of the capital of said association, company, copartnership or corporation in whatsoever manner the same is divided in case no shares of capital stock have been issued: Provided, however, that in case the whole or any portion of the property of such association, company, copartnership or corporation be encumbered by a mortgage or mortgages, the commissioner of revenue shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock, or to the value of the capital in case there should be no such shares, the aggregate amounts of such mortgage or mortgages; and the result shall be deemed and treated as the true cash value of the

property of such association, company, copartnership or corporation."

If the corporation have property "locally assessed" and on which it must pay tax locally, the assessment value of such property is deducted from the value arrived at by the commissioner of revenue.

In addition to the tax upon all the property of the corporation, including its capital stock, the general assembly has provided by sec. 82, revenue act, a tax upon the franchise and the corporation is required to pay this. They contend that the general assembly has not only obeyed the constitutional mandate, but that it has adopted a most efficient method of reaching for taxation everything of value incident to a corporation, including its capital stock; and that if it then imposed a tax upon the shares of stock in the hands of individuals, and required the individual to pay this tax, it would be taxing the same property twice—once through the corporation, when it was required to list and pay tax on its total capital stock, and a second time when it requires the shareholder to list and pay tax on the certificate which showed him to be a part owner of the same capital stock on which the corporation had already paid tax assessed at full value.

The general assembly for more than twenty years has consistently held to the policy of requiring the corporation, except banks, building and loans, etc., to pay the tax on its capital stock, instead of requiring the shareholders to pay the same. It has not thought it just or expedient to require both to pay. It contends that it has obeyed, both in letter and spirit, the constitutional mandate.

The same question has arisen in other states. It is interesting to note that a large majority of states have adopted a policy either similar to or identical with the legislation in this state.

Hon. H. M. London, Legislative Reference Librarian, has compiled a list of states adopting with regard to the taxation of corporations upon their entire property, including capital stock, and the exemption of shares from further taxation, systems similar to the North Carolina system. The list of such states is as follows:

Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon,

Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin.

The following states have systems which differ from the North Carolina system, as follows:

Tennessee. Shares of stock of all corporations, except shares in manufacturing companies, are taxable to the holder. The Supreme Court of Tennessee in *Fertilizer Co. v. McFall*, 128 Tenn. 645, has construed this, by saying that it was the legislative intention to assess the capital stock and corporate property of all manufacturing corporations, whether foreign or domestic, and hence the shares of stock of such corporations so assessed are exempt from further taxation.

Wyoming. Shares of stock appear to be taxable to the holders thereof, though in practice they are not assessed.

Ohio. Shares of stock in domestic corporations and also in foreign corporations which pay taxes in Ohio on 2/3 of their corporate property, are exempted from taxation.

Maine. Shares of stock are taxed locally to the holder as personal property. To prevent double taxation, however, the tax on shares is reduced in accordance with the amount paid by the corporation upon its tangible property. Special provisions of corporate taxation have abolished the tax on shares to the holder for railroad, street railway, telegraph, telephone, manufacturing, mining, smelting, agricultural and stock-raising companies. As a matter of fact, little or no revenue is obtained from the taxation of shares to the holder as personal property.

Vermont. The shares of stock in corporations (except railroads, telephone, insurance, surety, steamboat, car, and transportation companies) are taxed to the holders as personal property. In the case of "manufacturing, mercantile, or trading" companies, deduction is made for all property taxed to the corporation. In the case of "all other corporations", deduction is made for real estate so taxed only.

In Colorado, shares in foreign corporations are taxable to the holder; and in Indiana, Illinois, Louisiana and Wisconsin, bank stock is taxable to the holder; but there is no double taxation.

PART TWO.

SUGGESTIONS AND FORMS.

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The Incorporators.

Any number of persons (but not less than three) of full age may become incorporated, Sec. 2. They should be persons who can meet the day set for organization; and it is usually best to limit the number to three. Each must subscribe to at least one share of stock, if it be a stock company, or for one membership if it be a non-stock company. Soon as the certificate of incorporation be granted by the Secretary of State, it should be recorded in the office of the Superior Court of the county in which the company is to have its principal office or place of business, Sec. 5.

The First Meeting.

If the time and place of the first meeting of the incorporators be fixed in the certificate of incorporation with a temporary organization provided for, the first meeting may be held without other notice or formality, at the time and place named. The temporary president calls the meeting to order; the temporary secre-

tary calls the rolls of incorporators, ascertains that all are present; and so announces. The charter is then read, and by resolution, accepted. Subscription lists are then offered, and others wishing to subscribe to stock sign the subscription lists, and then become shareholders to the same extent as the incorporators (none at that time having done anything more than to sign an agreement to subscribe to and pay for the number of shares of stock set out on the subscription blank). These subscribers are then admitted to participation in the meeting. By-laws are adopted and directors elected.

If the certificate of incorporation does not designate the time and place of first meeting, and does not provide a temporary organization, Sec. 8 must be observed. The meeting must be called by a notice signed by a majority of the incorporators, designating time, place and purpose of meeting, which notice shall be published at least two weeks before the meeting in a newspaper of the county wherein the corporation is established. Or the meeting may be called without publication, if two days' notice be served personally on all of the incorporators. If all of the incorporators in writing waive notice and fix a time and place of meeting, no notice and no publication are required. In any case the minute book of the corporation should show in what manner the first meeting was called. Ordinarily, the method of fixing time and place and providing a temporary organization in the certificate of incorporation, will be found the more convenient.

Stockholders' Liability.

Holders of shares of stock for which par value has been paid to the corporation, either in money or money's value, are not liable for assessment (except stockholders in banks, building and loan and insurance companies). Executors, administrators, trustees and those holding shares as collateral security only shall not be personally liable, even though the stock be not fully paid. Stockholders may be held liable to creditors for frauds in which stockholders actually participate. Sec. 83.

Private corporations may be divided into two classes. First, those having capital stock; and to this class belong most business and trading corporations. And, second, those corporations having no capital stock, but in lieu thereof, memberships. To this latter class belong most of the religious, charitable, benevolent, fraternal and social organizations.

Again, corporations having capital stock are divided into those

having shares with par value, and those having shares without par value. The Secretary of State has prepared forms for use in organizing corporations with capital stock and those without capital stock. The following is the official form prepared by the Secretary of State for those corporations having capital stock :

CERTIFICATE OF INCORPORATION

of

This is to Certify, That we, the undersigned, do hereby associate ourselves into a corporation under and by virtue of the laws of the State of North Carolina, as contained in Chapter 22 of the Consolidated Statutes, entitled "Corporations," and the several amendments thereto, and do severally agree to take the number of shares of capital stock in the said corporation set opposite our respective names and to that end do hereby set forth:

1. The name of this corporation is-----
2. The location of the principal office of the corporation in this State is at-----in the-----of-----County of-----
but it may have one or more branch offices and places of business out of the State of North Carolina, as well as in said State.

3. The objects for which this corporation is formed are as follows:

And in order properly to prosecute the objects and purposes above set forth, the corporation shall have full power and authority to purchase, lease and otherwise acquire, hold, mortgage, convey and otherwise dispose of all kinds of property, both real and personal, both in this State and in all other States, Territories and dependencies of the United States; to purchase the business, goodwill and all other property of any individual, firm or corporation as a going concern, and to assume all its debts, contracts and obligations, provided said business is authorized by the powers contained herein; to construct, equip and maintain buildings, works, factories and plants; to install, maintain and operate all kinds of machinery and appliances; to operate same by hand, steam, water, electric or other motive power, and generally to perform all acts which may be deemed necessary or expedient for

the proper and successful prosecution of the objects and purposes for which the corporation is created.

4. The total authorized capital stock of this corporation is _____ (\$ _____) Dollars, divided into _____ shares of the par value of _____ (\$ _____) Dollars each.

5. The names and postoffice addresses of the subscribers for stock, and the number of shares subscribed for by each, the aggregate of which being the amount of capital stock with which the company will commence business, are as follows:

Name	Postoffice Address	No. of Shares
------	--------------------	---------------

6. The period of existence of this corporation is limited to _____ years.

7. The board of directors of this corporation shall have power, by vote of a majority of all the directors, and without the assent or vote of the stockholders, to make, alter, amend and rescind the by-laws of this corporation.

In Testimony Whereof, We have hereunto set our hands and affixed our seals, this the _____ day of _____

A. D. 19_____

----- (Seal)
----- (Seal)
----- (Seal)
----- (Seal)
----- (Seal)
----- (Seal)
----- (Seal)

Signed, sealed and delivered in the presence of

_____, Witness.

STATE OF _____ } ss.
COUNTY OF _____ }

This is to Certify, That on this _____ day _____
A.D. 19____, before me, a_____, personally
appeared _____

who, I am satisfied, are the persons named in and who executed the foregoing certificate of incorporation of-----

-----, and I having first made known

to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this the-----day of-----A.D. 19-----
(L. S.) -----

This form was prepared before the enactment of Chapter 116, Public Laws of 1921 (herein Section 88). Since the ratification of this act, if a corporation be organized having shares without par value, Paragraph 4 of the standard form must be changed; and it should read substantially as follows:

“4. The total authorized capital stock of this corporation shall consist of-----shares without par value, no share of which shall be issued unless and until the sum of----- (\$-----) Dollars shall have been paid into the treasury of the company for each such share; or until property or things of value, which value shall be determined from time to time by the Board of Directors, shall have been conveyed or delivered to this corporation.”

No other change in the form of the certificate of incorporation seems necessary. And with such change in Paragraph 4, the standard form may be used for the organization of corporations having shares without par value.

It would seem that a certificate of incorporation may contain provisions, both for shares with par value and shares without par value. In states having similar statutes the certificate of incorporations provide for shares with par value and shares without par value. In such case Paragraph 4 should set out fully and explicitly the provisions to that effect. This paragraph should state the number of shares to be issued with par value and the number without par value; and whether they shall have an equality in the distribution of earnings and assets of the corporation, or whether one shall have preference over the other, and to what extent.

In the absence of well established precedent in this state for the charter of a corporation whose capital stock shall have no par value, it has been deemed worth while to quote in full the certificate of incorporation of a large company, recently organized under the laws of the State of Delaware, and whose shares have been admitted to all the large stock exchanges.

CERTIFICATE OF INCORPORATION

of

PACIFIC OIL COMPANY

We, whose names are hereto subscribed, hereby associate ourselves into a body corporate, under the provisions of Article 1 of Chapter 65, Title Nine, of the Revised Code of the State of Delaware (1915) and of the acts amendatory thereof and supplemental thereto, assuming all the powers, rights and privileges granted bodies corporate under the said statutes and acts, and we do hereby make and file this certificate, hereby declaring and certifying that the facts herein stated are true, namely:

Article I.

The name of this corporation is Pacific Oil Company.

Article II.

Its principal office in the State of Delaware is located at Number 7 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is the Corporation Trust Company of America, Number 7 West Tenth Street, Wilmington, Delaware.

Article III.

The nature of the business of this corporation and the objects or purposes proposed to be transacted, promoted or carried on by it are as follows, namely:

1. To buy, contract for, lease, and in any and all other ways, acquire, take, hold and own, and to sell, mortgage, lease or otherwise dispose of lands, mining claims, mineral rights, oil wells, gas wells, oil lands, gas lands and other real property, and rights and interests in and to real property, and to manage, operate, maintain, improve, and develop the said properties, and each and all of them.

2. To buy, contract for, lease, and in any and all other ways, acquire, take, hold or own, and to sell, mortgage, lease, and otherwise dispose of all rights of way, easements, franchises, and rights thereto, and to deal in the same in every way.

3. To buy, contract for, lease, and in any and all other ways, acquire, take, hold and own personal property of every character and description, and to sell, mortgage, lease and otherwise dispose of the same.

4. To engage in any kind of manufacturing business and to buy, contract for, lease, construct and otherwise acquire, take, hold and own, and to sell, mortgage, lease or otherwise dispose of manufacturing plants, and to manage, operate, maintain, improve and develop the same.

5. To buy, construct, contract for, lease and in any and all other ways acquire, take, hold and own refineries for the treatment of petroleum and other mineral oils and gases; the tanks and other facilities for the storage thereof; the pipe lines and other facilities for the distribution thereof; and the manufacturing plants, works and appurtenances for the production, distribution and sale of petroleum, oil, gas and of any and all refinements and by-products thereof; to prospect for oil, to drill oil wells and to develop the same; to refine crude oil; to improve, maintain, operate and develop, and to sell, mortgage, lease or otherwise dispose of the said properties, and to sell or otherwise dispose of such petroleum, oil, and all refinements and by-products thereof.

6. To enter into, maintain, operate or carry on in all its branches the business of mining and of drilling, boring and exploring for, producing, refining, treating, distilling, manufacturing, piping, carrying, handling, storing and dealing in, buying and selling petroleum, oil, natural gas, asphaltum, bitumen, bituminous rock, and any and all other mineral and hydro-carbon substances, and any and all products or by-products which may be derived from said substances or either of them; and for such or any or such purposes to buy, contract for, lease and in any and all other ways acquire, take, hold, and own, and to sell, mortgage, lease and otherwise dispose of, and to construct, manage, maintain, deal in and operate mines, refineries, pipe lines, tanks, machinery, wharves, steam, sailing and other vessels or watercraft of every kind, character and description, and otherwise to deal in, operate, establish, promote, carry on, conduct and manage any and all other property and appliances that may in any wise be deemed advisable in connection with the business of the corporation or any branch thereof, or that may be deemed convenient at any time by the Board of Directors of the Corporation.

7. To do engineering and contracting in the designing, construction, improvement, extension, maintenance and repair of oil or gas plants, including pipe lines, tanks and other appliances thereto appertaining; also in the opening, developing and operating of petroleum, gas and oil wells, both for the corporation and for others.

8. To manufacture, buy, sell and otherwise deal in gas and oil machinery and appliances; also, lumber, stone, brick, steel, iron and other materials in connection with the building, erection, construction, development, improvement, extension, maintenance and repair of the properties herein enumerated, both for this corporation and for others.

9. To purchase, appropriate or otherwise acquire, take, hold and own, and to sell, mortgage, or otherwise dispose of, and to store, supply and furnish water for irrigation, manufacturing, industrial, hydro-electric, mining and domestic uses, and for any other purpose to which water can be applied; and to this end to purchase, appropriate, construct or otherwise acquire, take, hold and own, manage, operate, extend, improve and develop, and to sell, mortgage, lease or otherwise dispose of reservoirs, dams, ditches, canals, flumes and pipe lines and all other works necessary or convenient for the impounding, diversion, storing, distribution and use of water.

10. To buy, contract for, construct, lease, and in any and all other ways acquire, take, hold, and own, and to sell, mortgage, lease and otherwise dispose of transportation line or lines by land or water, and to manage, operate, maintain, improve, extend, and develop the same.

11. To buy, contract for, and in any and all other ways acquire, take, hold and own, and to sell, mortgage, lease and otherwise dispose of patents, licenses and processes or rights thereunder; and franchise rights, and Federal, State and municipal grants of every character which the corporation may deem advantageous in the prosecution of its business, or in the maintenance, operation, development or extension of its properties.

12. To borrow money and to issue bonds, debentures, notes and other evidences of indebtedness and obligations from time to time for any lawful corporate purpose, and to mortgage, pledge and otherwise charge any and all of its properties, rights, privileges and franchises to secure the payment thereof.

13. To loan money; to purchase, acquire, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of and deal in shares of the capital stock, bonds, debentures, notes or other securities, or evidences of indebtedness, of any other corporation or association, whether domestic or foreign, and whether now or hereafter organized; and while the holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon to the same extent as a natural person might or

could do; and to deal in stocks and securities either as an agent or broker, or otherwise.

14. To purchase or otherwise acquire from time to time shares of its own capital stock and to own, hold, sell, transfer or reissue the same.

15. To promote or to aid in any manner, financially or otherwise, any corporation or association of which any stocks, bonds or other evidences of indebtedness or securities are held directly or indirectly by this corporation; and for this purpose to guarantee the contracts, dividends, stocks, bonds, notes and other obligations of such other corporations or associations; and to do any other acts or things designed to protect, preserve, improve or enhance the value of such stocks, bonds or other evidences of indebtedness or securities.

16. To carry on any other lawful business whatsoever which may seem to the corporation capable of being carried on in connection with the above, or calculated directly or indirectly to promote the interest of the corporation or to enhance the value of its properties; and to have, enjoy and exercise all the rights, powers and privileges which are now or which may hereafter be conferred upon corporations organized under the same statute.

17. To conduct its business (including the holding, purchasing, mortgaging, and conveying of real and personal property) in the State of Delaware, other States, the District of Columbia, the territories, colonies and possessions of the United States and in foreign countries; and to maintain such offices either within or without the State of Delaware as may be convenient; provided, however, that nothing herein contained shall be deemed to authorize this corporation to construct, hold, maintain or operate within the State of Delaware railroads, railways, telegraph or telephone lines, or to carry on within said state any public utility business.

The foregoing clauses shall be construed both as objects and powers; and the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the corporation.

Article IV.

The total number of shares authorized of the corporation's capital stock is three millions five hundred thousand (3,500,000) and such shares are without nominal or par value. The number of shares with which the corporation will commence business is ten.

Such stock may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the Board of Directors.

This corporation shall be entitled to treat the person in whose name any share is registered as the owner thereof, for all purposes, and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the corporation shall have notice thereof, save as expressly provided by the laws of the State of Delaware.

Article V.

The names and places of residence of each of the original subscribers to the capital stock of the corporation are as follows, namely:

<i>Name</i>	<i>Residence</i>	<i>No. of Shares</i>
John D. Van Cott	Brooklyn, City of New York, N. Y. Wilmington, Delaware	Eight
T. L. Croteau	Wilmington, Delaware	One
S. E. Dill	1593 Bedford Ave.,	One

Article VI.

The corporation shall have perpetual existence.

Article VII.

The private property of the stockholders shall not be subject to the payment of the debts of the corporation, but shall be exempt from corporate liability.

Article VIII.

1. In furtherance, and not in limitation of the powers conferred by statute, the Board of Directors are expressly authorized:

(a). To make, alter, amend and rescind the by-laws of this corporation;

(b). To fix the amount to be reserved as working capital;

(c). To authorize and cause to be executed and delivered mortgages and other instruments creating liens on the real and personal property of this corporation;

(d). From time to time to determine whether and to what extent and at what times and places, and under what conditions and regulations the

accounts and books of this corporation (other than the stock ledger), or any of them, shall be open to the inspection of the stockholders and no stockholder shall have any right to inspect any account or book or document of this corporation, except as conferred by statute or authorized by the directors or by resolution of the stockholders.

2. This corporation may, in its by-laws, confer powers and authority upon its directors, in addition to the foregoing, and in addition to those expressly conferred upon them by statute.

3. Meetings of the stockholders may be held outside of the State of Delaware.

In witness whereof, we, the undersigned, being all of the original subscribers to the capital stock of this corporation and having respectively agreed to take the number of shares of such stock hereinbefore stated, have hereunto set our hands and seals this 1st day of December, 1920.

JOHN D. VAN COTT (Seal)

T. L. CROTEAU (Seal)

S. E. DILL (Seal)

State of New York, }
County of New York, } ss.:

Be it Remembered that on this first day of December, A.D. 1920, personally appeared before me, William J. Flanagan, a Notary Public, in and for the County of New York, State of New York, John D. Van Cott, one of the parties to the foregoing certificate of incorporation, known to me personally to be such, and acknowledged the said certificate to be his act and deed and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

WM. J. FLANAGAN,
Notary Public, No. 255,
New York County, N. Y.
New York Register No. 1279.
My term expires March 30, 1921.

WM. J. FLANAGAN

Notary Public,

New York County, N. Y.

State of Delaware, }
County of New Castle, } ss:

Be It remembered that on this 2nd day of December, A.D. 1920, personally appeared before me, Herbert E. Latter, a Notary Public of the State of Delaware, T. L. Croteau and S. E. Dill, parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be their act and deed, respectively, and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

Notary Public.

HERBERT E. LATTER,

Notary Public,

Appointed Feb. 25, 1919.

State of Delaware.

Term, two years.

Certificate of Stock.

The following is the form of the certificate of stock issued by said Pacific Oil Company:

REGISTERED: ----- 1921. TRUST COMPANY, Registrar. ----- Asst. Secretary.	100 Shares INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE No. ----- Shares 100 PACIFIC OIL COMPANY (Certificate of Shares without nominal or par value) This is to certify that ----- is the owner of One Hundred fully paid and non-assessable shares without nominal or par value of the capital stock of Pacific Oil Company, transferable on the books of the said Company by the holder hereof in per- son or by duly authorized attorney, upon surrender of this certificate properly en- dorsed. This certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar. In witness whereof, the said company has caused this certificate to be signed by its President or one of its Vice Presidents and by its Secretary or one of its Assistant Sec- retaries, this ----- 1921. ----- Assistant Secretary. Vice-President (Usual form of Assignment on reverse side)	By ----- Asst. Secretary. ----- COUNTERSIGNED ----- TRUST COMPANY, Transfer Agent. ----- 1921
---	--	---

The Standard form prepared by the Secretary of State leaves blanks only for those things which are essential to organization:

1. The name of the corporation.
2. The location of its principal office.
3. The object for which the corporation is formed.
4. The amount of authorized capital stock.
5. The names and post-office addresses of the subscribers and the number of shares subscribed by each.
6. The period for which the corporation is to exist.

The Statute provides that "The certificate of incorporation may also contain any provision, consistent with the laws of this State, for the regulation of the affairs of the corporation, or creating, defining, limiting and regulating its powers, directors, and stockholders, or any class or classes of the latter."

In view of this provision, it is suggested that the certificate of incorporation might well include the following additional provisions, to follow seriatim the seven sections contained in the standard form:

"8. Neither the incorporators nor stockholders of this corporation shall be individually liable for its debts, defaults, or other obligations, other than to the extent of their subscriptions to the capital stock; and when their said subscriptions shall have been fully paid, all their liability on account of being organizers or stockholders shall terminate."

"9. The meeting of the incorporators for the purpose of organization shall be held at _____ in the city of _____ on the _____ day of _____ at _____ o'clock ____ m, and each of the incorporators accepts service of notice of said meeting and waives all other and further notice. Until the said meeting shall have been held and a permanent organization effected, _____ shall act as temporary president and _____ shall act as temporary secretary; and all of the incorporators shall act as directors."

The insertion of this latter section in the certificate of incorporation obviates the necessity of giving the notices required by Sec. 8. It also simplifies the procedure at the first meeting; as the temporary president calls the meeting to order, deriving his authority from the certificate of incorporation, and not from a motion made at the first meeting.

If the corporation be one for the purchase and sale of real estate, it might be well to insert the following clause:

"10. Any deed or other obligation of this Company, signed in its name by its President or Vice-President and attested by its Secretary, and to which the corporate seal shall have been affixed, shall be, and is hereby declared to be a valid obligation of this corporation."

If the incorporators wish to place limitations or restrictions upon sales of the capital stock, such restriction should be fully set out in the certificate of incorporation. Ordinarily, restrictions

upon the sale of shares of stock are a needless embarrassment to shareholders, but sometimes they serve a useful purpose. Very recently our Supreme Court has upheld a restriction upon the sale of shares of stock upon the ground that the charter of the company provided for it, and the stock certificate set it out, as follows:

"This certifies that _____ is the owner of _____ shares of twenty-five dollars each of the capital stock of Iredell Telephone Company, which can not be sold or transferred until reported to, and approved by, the board of directors, and then transferable only on the books of the corporation by the holder thereof in person or by attorney, upon surrender of this certificate properly indorsed."

The Court held: "There being no statute to the contrary and the Secretary of State being authorized to grant corporate charters by virtue of Constitution, Art. 8, Sec. 1, a provision in a charter granted to a telephone company that shares of the stock therein should not be transferred or sold until reported to and approved by the directors was valid, and a purchaser was not entitled to enforce a transfer over the action by the directors in good faith."

Wright v. Iredell Telephone Co., 182 N. C. 308, 108 S. E. 744.

The Court further said:

"We have found no statute in the laws of this state forbidding restrictions and limitations in the sale and transfer of stock in corporations. And it would seem that where the Legislature, in the exercise of its constitutional grant, or reservation has authorized the Secretary of State to issue certificates of incorporation and approve the application for charters, the provisions of such charters, not inconsistent with the legislative policy and so approved by the Secretary of State, have, at least, the force and effect of a valid agreement, and binding as between the stockholders who take with notice of such provisions."

Sometimes persons buy into a corporation with hostile design. They may wish access to the books and records of the corporation to further some ulterior and often-times improper purpose. The law gives every stockholder certain rights with regard to the inspection of its books; but it would seem competent to restrict that right by inserting in the certificate of incorporation and in the stock certificate, a reasonable regulation of that right. The

following clause has been inserted in a number of charters, and apparently has not so far been challenged:

"No person who shall acquire stock in this corporation by transfer shall have the right to inspect the books, or examine the records of this corporation, until he shall have been a stockholder of record for at least ninety days."

Some charters provide that the directors may authorize a mortgage of the company's property to be executed by the president and secretary and treasurer; and any other provision not contrary to law or public policy may be included in the certificate.

Corporations Without Capital Stock.

The certificate of incorporation for corporations without capital stock, adopted by the Secretary of State, is as follows:

(Non-Stock)

CERTIFICATE OF INCORPORATION

of

This is to Certify, That we, the undersigned, do hereby associate ourselves into a non-stock corporation under and by virtue of the laws of the State of North Carolina, as contained in Chapter 22 of the Consolidated Statutes, entitled "Corporations," and the several amendments thereto, and to that end do hereby set forth:

1. The name of this corporation is-----
2. The location of the principal office of the corporation in this State is at No.-----Street, in the-----
of-----County of-----
3. The objects for which this corporation is formed are as follows:

And in order properly to prosecute the objects and purposes above set forth, the corporation shall have full power and author-

STATE OF _____ }
 COUNTY OF _____ } ss.

This is to Certify that on this _____ day of _____,
 A. D. 192____, before me, a _____, personally
 appeared _____

_____ who, I am satisfied, are the persons named in and who executed
 the foregoing certificate of incorporation of _____
 _____ Company, and I having first made known to them the
 contents thereof, they did each acknowledge that they signed,
 sealed and delivered the same as their voluntary act and deed, for
 the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed
 my official seal, this the _____ day of _____,
 A. D. 192_____.

[L. S.]

Three sections may, with advantage, be added to this certificate
 as follows:

"8. Neither the incorporators nor the members of this organ-
 ization shall be individually liable for its debts, defaults or other
 obligations."

"9. The meeting for the purpose of organization shall be held
 at _____ in the city of _____ on the
 _____ day of _____, 19____ at _____ o'clock _____ M.
 and each of the incorporators accepts service of notice of said
 meeting and waives all other and further notice. Until the said
 meeting shall have been held and a permanent organization
 effected, _____ shall act as temporary president,
 and _____ shall act as temporary secretary."

All business corporations might well include in charters, par-
 agraph 10, as follows:

"10. The directors of this company, without further author-
 ity than herein contained, may, from time to time, fix the amount
 of the earnings of this company which shall be reserved as
 working capital, and they may change the said amount from
 time to time as the situation and condition of the company may
 seem to justify."

If it be desired to reserve the right for the corporation to merge with another, that is, to be consolidated with another, the stockholders of the company being required to accept securities instead of money for their stock, then such merger should be provided for in the certificate of incorporation. The plan of the permitted merger should be at least outlined, and its general principles stated in the certificate. The certificate of stock when issued should contain sufficient notice of this reserved merger right, to put all holders and purchasers of stock upon notice. It would seem that when the certificate of incorporation sets out the privilege of merger, and the certificates of stock sufficiently refer to the same, a merger would be upheld by the Courts, even though statute law be silent thereon.

For charter of incorporation providing for merger see page 625.

If the corporation be of a social character, it might be well to provide in Section 7, of the certificate of incorporation not only the terms upon which a member can be admitted but also the terms and conditions under which a member may be excluded; otherwise disagreeable litigation may result. If a provision be inserted where a member may be excluded, that provision should be set out in full in the certificate of membership, so that a person becoming a member shall be charged with notice. Social organizations probably have the inherent right to expel members, but this is a harsh and disagreeable remedy. A milder method might be provided by which, instead of being expelled, a person's membership would be canceled upon two-thirds vote of the membership or directors. Occasionally, it is highly important that some member's connection with the organization be severed, and this should be done in the manner least offensive.

When the certificate of incorporation shall have been granted by the Secretary of State, it should be recorded in the office of the Clerk of the Superior Court of the County in which is to be located the principal office of the corporation. The corporation becomes a body politic from the time the Secretary of State issues the certificate; but the statute makes further requirement that the certificate of incorporation be recorded in the county wherein the principal office is located. Doubtless this is for the purpose of giving notice to all who may deal with the corporation that there is no individual liability; and that they must look to the corporation itself and not to those who have charge of the business.

A serious question might arise if the incorporators failed to have this record made in the office of the Clerk of the Superior Court. If the name used was one which did not suggest a corporation, and a person in good faith, dealt with the managers believing it a partnership and not a corporation, and nothing appearing in the clerk's office to show that it was a corporation a very strong case might be made out tending to hold the incorporators individually liable for their failure to give the notice in the county, in the manner required by law.

Certificate of Stock.

If the corporation be a stock company, each shareholder is entitled to a certificate from the corporation showing the number of shares belonging to him and their par value. The certificate should be signed in the name of the corporation by its president or vice-president and attested by its secretary; and the corporate seal should be affixed. This is all that is required by the statute, but in most instances very much more is desirable.

The corporation may have one class of stock only, usually called common stock; or it may have a number of classes. It may have common stock with par value and common stock without par value; and it may have one or more classes of preferred stock. Where there be more than one class of stock, the certificate of each and every class should set out with sufficient fullness to at least give general notice, the terms, conditions and stipulations contained in each class.

If there be preferred stock, it should be stated explicitly wherein the preference consists; whether the preference is only as to earnings and dividends; or whether it appertains also to the assets of the corporation in dissolution. It should also be stated whether or not the preferred stock shall have any interest in the earnings and assets of the corporation other than to receive its dividends during the life of the corporation, and its par value at redemption of the stock or dissolution of the corporation.

If the resolution providing for the issue of preferred stock, and the certificate of such issue, merely state that dividends on the preferred stock at the specified rate shall be paid before any dividend shall be paid upon common stock, the question arises whether this is not merely a priority in payment. For instance, if the stock be preferred and the rate of dividend be Seven Per Cent, and the same be paid; and afterward a Seven Per Cent dividend

be paid on the common stock, and there shall still remain a surplus, available for further dividends, the question may arise whether the preferred stock shall not also be entitled to share with the common stock in the excess above Seven Per Cent. Each class of stock will have received Seven Per Cent. The preferred shareholders will have received their dividend first, as is provided in the resolution and certificate. The holders of the common stock will have received their dividends of Seven Per Cent. It might be strongly argued that thereafter any additional dividend should be shared alike by the common and preferred stockholders.

See case of *Prosser v. Reading Company*, decided by United States Supreme Court May 29th, 1922, and published in the United States Supreme Court Advance Opinions of July 1st, 1922.

If the intention be to give the preferred stockholders the first claim upon the earnings to an amount sufficient to pay their dividend and to exclude them from further dividends, that should be expressly stated in both resolution and certificate. It should be stated that the preferred stock shall be entitled to its dividends before anything shall be paid to the holders of the common stock, and that in any dissolution of the corporation, the holders of the preferred stock shall be paid the par value of their shares with any accrued and unpaid dividends, before anything shall be paid to the holders of the common stock; but after the payment of the prescribed dividends upon the preferred stock all the other earnings of the corporation shall belong to the holders of the common stock; and that in any dissolution of the corporation, after the preferred stock shall have been redeemed at par together with any accrued and unpaid dividends, all the balance of the assets of the corporation should belong to the holders of the common stock.

If there be any restriction upon the voting power of any class of stock, that should be set forth in the resolution authorizing the issue of the same; and in the certificate of such shares. If there be any restriction upon the right of sale of stock or transfer of the same, this should be set out in the charter of the corporation and in the certificate of stock. In addition to this, at a prominent place on the certificate, preferably at the top, near or under the words "Incorporated under the laws of North Carolina," should be the words "not assignable or transferable except in the manner provided in this certificate."

If the shares have par value, that value should always be \$100. Shares of a different value are objectionable. They require ex-

planation. Fractional shares are particularly objectionable. It would seem that the capital stock should be of two denominations, either shares of \$100 each par value, or shares of no par value.

Every bond, and every issue of preferred stock should contain a call for redemption clause. This will enable the company to call in for redemption any issue or part of issue of bonds or preferred stock, prior to the dates prescribed for payment or redemption. Without such clause the holders of bonds and preferred stock may refuse to accept payment in advance of the stipulated date, and the company would be powerless. It is usual to provide that if these securities be called for payment or retirement in advance of their due date, a small bonus, three or five per cent, shall be paid in addition to the par value and accrued interest or earned dividend.

A method must be prescribed for giving notice to the holders of the securities, of the purpose and election to redeem. To the preferred stockholders a notice duly mailed to the addresses as shown on the stock book is sufficient. But notice to bondholders is not so simple. Usually notice of the intention to redeem bonds is given to the Trustee; and if the issue of bonds be large, or likely to be widely distributed, the redemption clause should provide that notice of the call for redemption published in some newspaper (designating the city or town wherein the paper be published) shall be sufficient notice to the bondholders. Timely notice should be given, and a date named on which interest on the called bonds or dividends on the called stock shall cease, whether the same shall or shall have not been surrendered for payment. This clause should be included in the deed of trust given to secure the bonds, and in the resolution authorizing the issue and sale of preferred stock, as well as in the face of the bonds and certificates of preferred stock.

The By-Laws.

After organizing, the first duty of the stockholders is to adopt a code of by-laws.

If the corporation is to be a large one, with stock widely distributed, and with many stockholders so situated that they will seldom attend meetings, the code of by-laws should be full, complete and explicit, giving to stockholders every reasonable protection. If the corporation be not a large one; and especially if it be local in its nature and controlled by a few, with little of the stock on the market, a short code of by-laws would be sufficient

and probably desirable. Conditions, restrictions and safeguards, proper and necessary when the stockholders live at a distance, and seldom if ever attend meetings, may be out of place when the stockholders are few, live near and are immediately in touch with the business. Not only may these conditions be unnecessary; they may become an actual hindrance to business, and they may fatally handicap the company.

On page 674 will be found a code of by-laws for use by a company of the former class; and on page 580 will be found a code adapted for use by a company of the class last mentioned. Neither code is complete. Each should have a chapter devoted to the conduct of the business in which the company will engage. In this chapter the place of business and other details should be set forth; and the manner in which the business is to be conducted. Seldom will it be found that any code of by-laws will exactly fit any particular corporation. The two codes are set out as suggestions and forms to be used, so far as desirable, and to be changed to fit conditions.

The By-Laws must prescribe:

1. The number of directors and the names and duties of other officers; and if salaries are to be paid the officers, the by-laws should either fix the same, or authorize the directors to do so.
2. The method of calling meetings and giving notice of same.
3. The method of drawing checks, signing notes, contracts, etc.
4. The by-laws should designate a depository for the company's funds.
5. If the officers be required to give bonds for the faithful performance of their duties, the by-laws should fix the amount of bond and the terms and conditions, and designate the custodian of the bonds.
6. The adoption of a corporate seal.
7. The directors should be given power (unless the certificate of incorporation shall contain such provision) to fix the amount of the profits or earnings which shall be reserved as working capital in addition to the paid-in capital. Dividends should only be paid from the surplus earnings not so reserved for working capital. The amount so reserved may be changed by the directors from time to time as the condition of the company may seem to justify. The active officers should be paid reasonable salaries and held responsible for faithful performance of duty. If an offi-

cer shall neglect to make a report; or shall fail to list or pay tax when funds are available, and on account of such neglect, a penalty be imposed, the officer should pay the same and not the corporation which had entrusted this duty to the officer. Directors should be paid; and if they endorse notes for the corporation they are entitled both to indemnity and compensation.

The Directors.

At the first meeting and after the adoption of by-laws, directors must be elected. Banks, building and loan and insurance companies usually elect rather large boards; and private corporations, small boards, some as small as three or five members. This because it is more convenient to have meetings when there are but few directors. Again when directors are numerous, they often lose interest and attend meetings irregularly.

Directorship carries serious responsibility. Directors are responsible to the corporation and to any party injured thereby, for fraud or gross negligence. They make themselves personally liable, if they vote for and pay dividends except from net surplus earnings; or if they vote for and pay dividends from such earnings when the debts of the corporation, whether due or not, exceed two-thirds of the value of its assets. Or, if under any guise, they give or pay to any stockholder any part of its capital stock except as provided by law (herein sec. 111), they render themselves personally liable to creditors, and under certain circumstances, to stockholders also.

Registrar of Stock and Transfer Agent.

Every corporation of any considerable size should have a registrar and transfer agent. The functions can be, and usually are, combined: One trust company, or bank, or a person can perform both. The adoption of this system is an almost complete protection against over-issue of stock; and it greatly minimizes the danger of forgery.

The corporation issuing the stock appoints some trust company, bank, or person as the registrar and transfer agent; and no certificate is thereafter binding upon the corporation unless certified to in the first instance by the registrar; and afterward every transfer likewise certified by him. The appointment of a registrar and transfer agent is effected by resolution of the stockholders or directors, and the delivery to the registrar of a duly certified copy of the resolution of appointment. The fol-

lowing are two certificates of authorization and the appointment of a registrar and transfer agent, who shall register and certify to the entire issue of capital stock, and afterward register and certify all transfers. The first form is for the registrar who shall certify to the original issue, and thereafter to transfers of the same. The second is the appointment of a transfer agent, the capital stock having already been issued.

CERTIFICATE OF AUTHORIZATION

To

To

COUNTERSIGN CERTIFICATES AS REGISTRAR.

This is to certify, That at a meeting of the directors of the _____, a corporation organized under the laws of _____ duly convened and held on the _____ day of _____, 192____, the following resolutions were adopted:

Resolved, That the _____ company, a _____ corporation, be and it is hereby appointed the registrar of the transfers of shares of stock of this company;

Further Resolved, That said trust company be and it is hereby authorized to countersign, as registrar, when signed by the President or Vice-President and Treasurer or Secretary of this company, an original issue of certificates of shares of this company to the number of _____ shares of common stock and _____ shares of preferred stock, and from time to time to register transfers of such shares and enter the particulars thereof on books kept for that purpose on the surrender for cancellation of certificates for such stock, and to countersign new certificates registered in lieu of certificates so canceled;

Further Resolved, That said trust company may use its own judgment or in its discretion may apply to and act upon instructions of its own counsel, or _____, the counsel of this company, or the President or Vice-President, or Treasurer or Secretary of this company, in respect to any question arising in connection with said registration, and that said trust company will not be held responsible for anything it may do pursuant to

such instructions, but shall be liable only for its own wilful default or negligence.

Further Resolved, That the Secretary be and he hereby is authorized and directed to sign and seal with the company's seal and to deliver as authorization to said trust company a certified copy of these resolutions and to accompany the same by certified copy of the articles of incorporation and by-laws of this company.

And it is certified further:

That the total number of shares of authorized capital stock is -----, divided as follows:

<i>Number of shares</i>	<i>Par Value</i>	<i>Amount</i>
Preferred -----	-----	-----
Common -----	-----	-----

That the cash or property for which the above mentioned shares are issued has been actually conveyed or transferred and delivered to the company.

That ----- certificates for ----- shares of stock have been issued and that a certified list detailing the particulars of such certificates is attached hereto.

That the officers authorized by the foregoing resolutions to sign certificates of stock are as follows:

President -----	-----
Vice-President -----	-----
Treasurer -----	-----
Secretary -----	-----

<i>Names of Officers</i>	<i>Address</i>
President -----	-----
Vice-President -----	-----
Treasurer -----	-----
Secretary -----	-----
Attorney -----	-----

<i>Names of Directors</i>	<i>Address</i>
-----	-----
-----	-----
-----	-----
-----	-----
-----	-----

Business address of company -----

Date of annual meeting-----
 Notice for calling annual meeting as required by the by-laws-----

Signed and sealed in behalf of the company by authority of the
 board of directors this-----day of-----, 192-----

For the Company,

 Secretary.

Corporate
 Seal

State of ----- } ss.:
 County of ----- }

On the-----day of-----in the year-----
 before me personally came-----
 to me known, who, being by me duly sworn, did depose and say
 that he resided in-----; that he is the-----of
 the-----, the corporation described in and
 which executed the above instrument; that he knew the seal of
 said corporation, that the seal affixed to said instrument was such
 corporate seal, that it was affixed by order of the board of direc-
 tors of said corporation, and that he signed his name thereto by
 like order.

CERTIFICATE OF AUTHORIZATION

To

 To

COUNTERSIGN CERTIFICATES AS TRANSFER AGENT.

This is to Certify, That at a meeting of the directors of the
 -----, a corporation organized under the laws
 of-----, duly convened and held on the-----
 day of-----, 19-----, the following resolutions
 were adopted:

Resolved, That the-----Company, a-----corpora-
 tion, be and it is hereby appointed the agent for the transfer of
 shares of stock of this company upon this company's books;

Further Resolved, That said trust company be and it hereby is
 authorized and directed to accept the written instructions of the

President and Treasurer of this company in respect to the names and number of shares in which the original issue of certificates of shares of this company shall from time to time be made in the aggregate number of-----shares of common stock and-----shares of preferred stock, and said trust company is further authorized to countersign as transfer agent, such certificates of shares when signed by the President or Vice-President and Treasurer or Secretary of this company;

Further Resolved, That said trust company be and it hereby is authorized to transfer the shares of this company and enter the particulars thereof on books kept for that purpose on the surrender for transfer of certificates for such stock and to countersign as transfer agent and deliver when signed by the President or Vice-President and Treasurer or Secretary of this company, new certificates issued in lieu of certificates so surrendered;

Further Resolved, That said trust company may use its own judgment or in its discretion, may apply to and act upon instructions of its own counsel, or-----, counsel of this company, or the President or Vice-President or Treasurer or Secretary of this company in respect to any question arising in connection with said agency, and that said trust company will not be held responsible for anything it may do pursuant to instructions given under any of the foregoing resolutions, but shall be liable only for its own wilful default or negligence;

Further Resolved, That the Secretary be and he hereby is authorized and directed to sign and seal with the company's seal and to deliver as authorization to said trust company a certified copy of these resolutions and to accompany the same by certified copy of the articles of incorporation and by-laws of this company.

And it is certified further:

That the total number of shares of authorized capital stock is -----divided as follows:

<i>Number of shares</i>	<i>Par Value</i>	<i>Amount</i>
Preferred -----	-----	-----
Common -----	-----	-----

That the cash or property for which the above mentioned shares are issued has been actually conveyed or transferred and delivered to the company.

That_____ certificates for_____ shares of stock have been issued and that a certified list detailing the particulars of such certificates is attached hereto.

That the officers authorized by the foregoing resolutions to sign certificates of stock are as follows:

President _____

Vice-President _____

Treasurer _____

Secretary _____

Names of Officers

Address

President_____

Vice-President_____

Treasurer_____

Secretary_____

Attorney_____

Names of Directors

Address

Business address of company _____

Date of annual meeting _____

Notice for calling annual meeting as required by the by-laws_____

Signed and sealed in behalf of the company by authority of the board of directors this_____ day of_____ 192____

For the Company,

Secretary

Corporate
Seal

State of_____ }
County of_____ } ss.

On the_____ day of_____, in the year_____
before me personally came_____,
to me known, who, being by me duly sworn, did depose and say
that he resided in_____ ; that he is the
_____ of the_____, the
corporation described in and which executed the above instru-

ment; that he knew the seal of said corporation, that the seal affixed to said instrument was such corporate seal, that it was affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

The transfer agent's duty is to certify to the proper issue of new certificates upon the surrender of the old. Both of these forms are in general use, but before appointing a registrar or transfer agent, the certificate of authorization should be submitted for his or its examination and approval.

Selecting a Bank.

The corporation should, by resolution of directors or stockholders, designate some bank as the depository of its funds; and should deliver to such bank certified copy of this resolution. The resolution should prescribe the form for drawing checks against the deposit and this form should always be observed. The corporation assumes responsibility for the bank's solvency; and if the bank shall fail, and loss of corporation funds result, the loss is the corporation's loss, and not the loss of its secretary and treasurer. If the selection of the bank be discreet, the risk of loss is almost nothing. The good will of a bank to its depositors is a valuable asset, imponderable, it is true, but very real.

If the corporation select the bank in which its funds are to be deposited, this good will inures to the benefit of the corporation. If the secretary and treasurer selects the bank for deposit, the good will often is enjoyed by him rather than by the corporation whose funds are the basis for this good will.

Political and Benevolent Contributions Forbidden.

The funds of a corporation can lawfully be used only for corporate purposes. After these funds have been paid to creditors or to stockholders, these persons have the right to do with the funds as they please. They have religious, charitable and benevolent obligations to meet; and, as citizens, they may contribute to political parties, campaigns or candidates. The corporation has no such right. Political contributions are an illegal use of corporate funds. Officers making political contributions from corporate funds may be required to repay. And in some instances they render themselves liable to criminal prosecution.

Contribution of corporate funds for charitable, benevolent or religious uses, not connected with the corporation itself, even

when made from the highest motives, are not justified in principle. Worthy as they are, these duties are not corporate, but are personal to stockholders and officers. If they use corporate funds for any of these purposes, they are diverting corporate funds to non-corporate expenses. During the World War, Congress by special act allowed such contributions. It was an emergency act to meet an unprecedented necessity. Now the necessity has passed, and such use of corporate funds can no longer be justified. A clear line of demarkation should be drawn and observed between corporation obligations and duties, and the personal duties and obligations of its officers in regard to benevolent, charitable and social obligations.

These remarks are not intended to apply to the expenditure of corporate funds for welfare work, or in the support of churches, schools, hospitals, Y. M. C. A. and other like institutions serving corporation employees. Such expenditures are justifiable on many grounds, and are usually wise and prudent, and even profitable in the larger sense, to the corporation itself.

Keeping the Corporation Records.

It is of the highest importance that a full and complete history of the corporation be preserved. It may be called for at any time; and for various purposes. If it cannot be produced a presumption of negligence, to say the least, arises.

The records of the proceedings of stockholders and directors should be kept in solid bound (not loose leaf) books. The minutes should be written upon the pages of this book; not typewritten and pasted on the page. The record books should import verity and should not be so kept as to easily permit substitution of pages or change of matter. A secretary who is not willing to write with pen, in the minute book, the proceedings of directors and stockholders, is hardly the man for the place.

The corporation should pay out its money by check, and the checks should be voucher checks showing for what the payments were made. All checks should be filed by year and month and preserved during the life of the corporation. Checks for pay rolls or other consolidated amounts, should state the purpose for which drawn but need not carry the names of all to whom payment should be made from proceeds of check. The check may state that it is for pay-roll for a certain period and refer to a book which will show the names on the pay roll for this period.

One of the most frequent, and at the same time least excusable faults in corporation management, is failure to keep proper records. In many states failure to keep records, and destruction of records by officers or employees of a corporation are made crimes, punishable with prison sentences.

All Corporation Contracts Should Run in Corporation Name.

It is often necessary that corporations, like other traders, must enter into contracts for the purchase or sale of commodities for delivery at some date in the future. This is not speculation. In fact, without some such arrangement the corporation would be forced to speculate upon the price which will obtain at some date in the future. Under this arrangement it can manufacture with a certainty of price at the date of delivery. All these contracts should be executed in the name of the corporation, and not of an officer.

Ratification and Estoppel.

In corporate management, it sometimes becomes advantageous, sometimes necessary, for officers to act without authority given in the manner prescribed by the by-laws. Sometimes irregularities or deficiencies in procedure are discovered after the power shall have been exercised and the purpose accomplished. Litigation and confusion would be the inevitable result were it not for the doctrines of Ratification and Estoppel, which have become fixed principles in corporate management.

Briefly, these principles establish the doctrine that an irregular or unauthorized act (if within the power of the corporation) will be validated if the stockholders shall, after having acquired knowledge thereof, either approve same affirmatively by resolution, or constructively by adopting a general resolution approving the officers' acts, or by approving the minutes of the former meeting at which the irregular action was had. These acts constitute Ratification.

If ratification be not accomplished, estoppel may supervene. If knowledge, especially from an official source, come to stockholders, of irregular or unauthorized acts (within the power of the corporation) performed by officers of the corporation and in its name, and these stockholders fail within reasonable time to object to these acts, and do not act seeking to rescind or reverse the acts complained of, they will be held to have consented

to these acts; and they will, thereafter be estopped to challenge same. The doctrines of ratification and estoppel are clearly and fully expounded in the opinion of the court in *Hill v. Atlantic & N. C. R. Co.*, 143 N. C. 539, 55 S. E. 854.

This was an action to annul the lease of the Atlantic & North Carolina Railroad to Howland Improvement Company. A special meeting of the stockholders of the Atlantic Railroad to consider and pass upon the proposition to lease the road was called to meet in the Company's office in New Bern on September 1st, 1904. Notice was given, but not in the manner provided in the by-laws of the Company. Plaintiff Hill did not attend the meeting; but a quorum of stockholders did attend. The meeting at New Bern adjourned to meet the same day at Morehead City and did reconvene at the latter place at three o'clock in the afternoon of the same day. A quorum was again present, but Mr. Hill did not attend. The lease was approved by the stockholders at Morehead City on September 1st, was executed by the officers of the railroad company and the improvement company and was delivered. On the morning of September 2, lessee took possession of the road.

On September 22, 1904, in regular annual meeting, the president of the A. & N. C. R. R. Co. reported to the stockholders that the lease had been made, its terms, etc., and that the railroad was then being operated by lessee under and by virtue of the lease. The stockholders approved the lease and ordered it recorded in the minutes.

The court held that the meeting held on September 1st, at which the lease was authorized, was not called in the manner prescribed by the charter (because the notice was published in only one newspaper when the charter required at least two), and that no notice was given of the transfer of the meeting to Morehead City. Nothing else appearing, the court would have held the meeting irregular, and the lease void.

But the court held that the approval of the lease given at the regular annual meeting held twenty days later was a ratification by the corporation, binding on all the stockholders, even though they did not attend the meeting on September 1st, and were opposed to the lease.

The court further held that those who attended the meetings on September 1st and September 22nd and opposed the lease, but who instituted no action or proceedings to attack the lease

until after the annual meeting of stockholders held in the latter part of September, 1905, more than a year after the execution of the lease, were barred and estopped by their silence and seeming acquiescence from challenging the regularity of the lease.

Justice Walker delivered the opinion of the court. It constitutes an exhaustive treatise upon these two important principles of corporate management.

Disregarding Technicalities.

The strong tendency of all courts is to disregard technicalities, and to recognize and deal with realities. This tendency will be seen clearly upon an examination and comparison of *Caldwell v. Morganton Mfg. Co.*, 121 N. C. 339, 28 S. E. 475, decided by a divided court, 3 to 2, at September Term, 1897, and *Watson, Trustee, v. Proximity Mfg. Co.*, 147 N. C. 469, 61 S. E. 273, decided by an unanimous court, ten years later.

Judge Thompson, in his great work on Corporations, called attention to and criticized *Caldwell v. Morganton Mfg. Co.*, *supra*. Commenting on this case, he said: "The North Carolina Supreme Court still sticks in the ancient wax." Vol. 7, sec. 8420.

The case was decided before the adoption of the present corporation law in 1901. It was rendered while the old corporation system was in force. While it may not have been overruled in explicit language, it is not in line with recent decisions, and can scarcely now be considered a controlling authority.

Insurance.

"When there devolves upon an officer or agent of a corporation such duties and responsibilities that a financial loss would result to the corporation from the death and consequent loss of services of such officer or agent, the corporation has an insurable interest in, and power to insure the life of the officer or agent for its benefit." Sec. 48.

This power is limited to those officers and agents whose death would cause financial loss. It is a power to be sparingly and discreetly exercised. The indiscriminate insurance of officers and agents would be plainly speculation; would constitute an improvident use of corporate funds; and might be held illegal. Besides, an officer insured might not remain so necessary to the corporation; and the policy of insurance might, to some extent, deter or postpone proper corporate action.

Ordinarily, any man's place can be filled without loss; and a wise management always has in view the uncertainty of life and of continued service; and has in view a possible successor for each officer or agent.

Group Insurance For Employees.

About the year 1912, a system of insurance of employees was inaugurated, and it has proven practical and highly advantageous. A life insurance company will write a policy insuring all the employees of a man or company without examination and without application from the beneficiary; and this policy is renewable annually, without examination and regardless of age. The policy is usually issued to the employer, who furnishes a list of his employees, stating name, residence, age, and to whom the employee wishes the benefit paid in case of death. To each employee the insurance company issues a certificate.

The employer pays the premium; but it is sometimes collected from the employee. Sometimes it is divided between employer and employee; sometimes provided entirely at the cost of employer. If employee leaves the service of employer, he has the right to take over and carry at his own expense the policy therefor. This seems to be the cheapest form of insurance. The cost of soliciting is small, and the cost of collecting premiums reduced to a minimum; medical examinations avoided entirely. All employees regardless of age or health are protected.

The amount of protection for each employee is usually one thousand dollars, and upon death is paid as provided to employee's beneficiaries. In case of total disability it is paid to the employee.

The benefits of this system are many and manifest. The cost is surprisingly moderate. The rate for age 16 is between \$5.00 and \$6.00 per year per thousand. For age 21, less than \$6; for age 30, about \$6.50; for age 40 less than \$8.00; for age 50 between \$13 and \$14; for age 60 less than \$30; with corresponding rates protecting the oldest possible employee. Rates are given for insuring employees a hundred years old.

Policies of various kinds are obtainable. A definite fixed sum may be provided for, payable at death or upon permanent disability; or the sum may increase in proportion to length of employment; or it may be limited to one year's wage.

Group insurance of employees is likely to become the policy of every corporation employing any considerable number of persons. It is available to the individual as well as to the corporation employer. It does not relieve the employer from liability to the employee for negligence; nor does it bar or limit employee's right to bring suit for injuries received or alleged to have been received by reason of employer's negligence. It is not a substitute for Workmen's Compensation; but is in addition thereto.

Fire, Burglar, Storm, Explosion, Etc., Insurance.

A business too hazardous to insure, is too hazardous to be operated by ordinary persons. Such business should be undertaken only by those able to carry their own insurance.

For ordinary business, insurance is a necessity to be considered like taxes, or any other operating expense. It should be given intelligent consideration; and only those things covered that are capable of loss. It were a waste of money to insure against fire, property which could not be burned, like detached brick smokestacks, and buried foundations of buildings. Applications for insurance should be general and all-inclusive; but with a list of the things excepted from the application and on which no insurance is asked.

This is important always. It may become doubly important if the policy contain the "Co-Insurance Clause." Policies usually contain clauses requiring prompt notice of all changes in ownership, and if any lien be placed on the property; or if judgment be obtained and levy made or if decrees of foreclosure be entered, the policy becomes void unless the insurer be notified and shall consent thereto. If there be liens or other insurance on property, these must be disclosed at the time of application; or both the old and the new insurance may be rendered void. The person having in charge the policy of insurance will not have performed his duty unless and until he shall have familiarized himself with the policies taken and shall have met all the conditions therein contained. He should read the policies; fine print as well as the large print, before the loss shall occur. Afterward is often too late. Two clauses usual in fire policies covering trading or manufacturing concerns deserve special mention.

First: The Iron Safe Clause.

Where the property covered by the insurance is constantly changing, like a stock of goods in a store, or the raw materials and finished products at a factory, it is usual to include in the policy an agreement that the insured will keep in a fire-proof safe, the books, inventories, invoices, bills of sale, etc., from which can be ascertained the amount of property contained in the building destroyed by fire. Or that insured will keep these records in some other building, so that the destruction of the building containing the property insured will not destroy the books, inventories, etc., necessary to ascertain the values of the property covered by insurance and destroyed. This clause seems reasonable and necessary. It has been upheld by the courts in numerous decisions.

Three-Fourths Value Clause.

The three-fourths value clause is used largely to protect against over-insurance and the moral hazard in places where there is none or indefinite fire protection. This clause provides that the assured can not recover more than three-fourths of the value of the property. It is misunderstood by some in the belief that they will only recover three-fourths of the amount of the loss, which is an error. This would be the three-fourths loss clause, which is not now in use in this state. For instance, if property is worth \$10,000 with insurance of \$5,000, the companies would pay any loss amounting to as much as \$5,000, the limit of recovery on such property under the operation of the three-fourths value clause being \$7,500. But if the same property was insured for \$10,000, companies would only pay \$7,500, being three-fourths of the value of the property in event of total loss. The North Carolina insurance law provides that the assured shall be reimbursed the proportionate excess of premium paid on the difference between the amount named in the policy and the ascertained values, with interest from the date of issue.

Second: The Co-Insurance Clause.

This is less easily understood, but is equally as important. It should never be inserted in a policy, unless the insured requests it. And insured should never request the insertion of this clause, nor consent thereto, unless he fully understands its effect. The clause usually reduces the rate of premium. It may also greatly

reduce the amount of protection under the policy. It may have the surprising effect of diminishing the amount payable under the policy in proportion as the value of the property destroyed exceeds the amount of insurance. Briefly, it may so operate, that the more the insured loses by fire, the less he will be paid under his policy.

Here is an explanation of the Co-Insurance Clause by Hon. James R. Young, who for twenty years was Insurance Commissioner of this state:

Co-Insurance Clause.

While more commonly designated as above it is called "Average Clause" and "Contribution Clause." Its technical name being "Reduced Rate Average Contribution Agreement" because if an owner carries less fire insurance than the average necessary to prevent rate discrimination between insurants, he must share in his own loss so as not to unbalance the experience (results) in his class.

This clause is founded upon the doctrine of average contribution which was recognized in marine insurance, the most ancient of all classes of insurance, in fact was recognized among the ancients prior to even marine insurance and fixed the reciprocal obligations of the owners of the cargo of a vessel to contribute towards the reparation of sacrifices made for the common safety in a storm.

The Rhodian practice of maritime average was embodied by the Romans in their mercantile code and is today found in practically all marine insurance. Walford defines maritime average as "a contribution made by all the parties concerned in a sea venture to make good a specific loss or expense incurred by one or more of them for the general benefit." The doctrine of average contribution is founded on the principle of equity and is by no means peculiar to insurance, in fact, it is far more ancient than, and independent of, insurance.

We can readily see how among the ancients the principle was recognized as sound and necessary for those who were associated in maritime ventures—simply furnishing the cargoes, so that when it was proposed in consideration of the payment of a small sum by each person who shipped goods at sea to assume the losses of those who were unfortunate, the insurer naturally took over the beneficent principle of full insurance for the property of the shipper.

It is hard to understand how fire insurance, following marine insurance in furnishing indemnity, failed to adopt at the beginning the principle of the average clause which had played so important and successful a part in marine insurance. While its adoption has been of slow growth, the fact that it is so important and necessary in arriving at and fixing proper and just rates, as well as other necessary conditions of the business, will increase its use and suggest its desirability in all fire insurance contracts.

Mr. E. G. Richards, formerly the United States manager of a large English company and one of the most learned and thoughtful fire underwriters, in an address said:

“Your attention is particularly directed to the effect of the absence of this obligation from the insurance contract, which prevents a close approximation to equitable rates.

“The basic principle of fire insurance being average, if every policy issued contained a condition that the assured should recover in case of loss no greater proportion than the amount insured bore to some uniform proportion of the value of the property insured, then all losses that occurred under such policies would be paid on that basis and the ratio then shown of losses to amounts written or premiums received in a particular class, would be a reliable basis from which an average rate could be justly and correctly predicated, and no one assured would secure any greater measure of protection for each dollar of value insured than any other. But, of the manifold premiums in a particular class for a specified time, if, as is now the case, some are on a basis of 100 per cent insurance to value, others, on 80 per cent, and many others but very lightly insured, and the majority or perhaps all without the condition above referred to, it is plain that the losses sustained in such class would be in larger proportion to the premiums as well as to the amounts insured, and thus the cost of insurance necessarily increased to those who carry full or substantially full insurance to value, with the opposite result for those who insure but a part of their values, yet secure protection upon their full values up to the amount of their insurance.

“There is no better way to illustrate this than by the system of governmental taxation, for the principle is the same in either case.

"If the system of fixing by assessment the values of property subject to taxation was abolished, Citizen 'A' might pay his percentage of tax upon 75 per cent of his values, while 'B' might pay his on but 50 per cent of his values, 'C' on 25 per cent, and others upon any basis of value which they might personally choose, and in such event the government (state or national) would fail to secure a sufficient amount of taxes to meet its needs. The principle of equality between the various taxpayers would be destroyed, and the government would be unable to fix a rate which could be depended upon to yield the sum required because the total sum of assessed values would be wanting.

"If fire insurance should ever be conducted by a state or by the national government, there is little doubt but that losses and expenses would be assessed against the insuring taxpayer in precisely the same manner as all other taxes are levied, viz.: upon the full assessed values of property so protected."

The difficulty with and prejudice against the co-insurance and other clauses is not that they are not based on proper principles or work an injustice, but the same that feeds the prejudice and feeling against fire insurance in the various results brought about by its policies and their conditions. Even persons carrying large amounts of fire insurance will not read, much less study, their contracts as embodied in the standard fire policy and its conditions, but go on under the impression that they are carrying a certain amount of insurance which they are to receive in case of a fire regardless of any conditions or provisions embodied in their contracts. Of course there must necessarily be at times different results from what they expected and disappointment follows, with feeling against the business and those who conduct it and appeals to lawmaking bodies.

Forms of Clauses.

The principle of the average or co-insurance clause is based on the percentage the amount of insurance carried bears to the value of the property insured. The different percentages called for determine the working of the clause as well as their names, for example, 50 per cent, 75 per cent, 80 per cent and even 100 per cent, or full average. They are all in the same form except the percentage and work out on the same principle.

The form of the clause as used for years is as follows:

"It is a part of the consideration of this policy, and the basis upon which the rate of premiums is fixed, that the assured shall

at all times maintain insurance on each item of property insured by this policy of not less than-----per cent of the actual cash value thereof, and that, failing so to do, the assured shall be an insurer to the extent of such deficit, and in that event shall bear his, her or their proportion of any loss."

The form in which this clause is now generally used is as follows:

"It is a part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that it is expressly stipulated and made a condition of the contract that, in event of loss, this company shall be liable for no greater proportion thereof than the amount hereby insured bears to-----per cent of the actual value of the property described herein at the time when such loss shall happen, nor for more than the proportion which this policy bears to the total insurance thereon. If this policy be divided into two or more items, the foregoing conditions shall apply to each item separately."

If you will observe the two forms of clauses as stated above you will find that the one formerly used is based upon the amount of insurance to be carried, it being understood that under this clause the assured must carry a certain per cent of the value of the property insured and if that amount of insurance is not carried, the assured becomes a co-insurer to the extent of the difference between the amount the clause requires to be carried and amount actually carried. In other words, the assured takes the position of another insurance company to the extent of such difference. The other form of clause does not make any condition as to the amount of insurance to be carried, but bases the contract upon the settlement to be made under the policy in case of a loss and works out the same result as is obtained by an application of the old clause.

To most of us the clause formerly used appears clearer and more easily understood, possibly because we are all used to it, but it involves not one company but all companies on the risk, while the second clause, has no reference to any other policy nor to any amount of insurance carried, but is solely a contract between the company issuing the policy and the assured. This, I take it, is possibly why this clause is substituted for the old one. It takes away all occasion to charge that there is a collusion or combination between the companies on the risk.

In order that we may see how the old clause works let us fill in the per cent as seventy-five and take as the value of property \$10,000.00, amount of loss as \$6,000.00 and the amount of insurance as \$6,000.00. In this case under this clause there would be a deficit of \$1,500.00 in amount of insurance to be carried, which should be 75 per cent of the value of the property. Value of the property \$10,000.00, 75 per cent \$7,500.00. Thus four policies of \$1,500.00 each, or \$6,000.00 insurance, would pay four parts of the loss and the insurer bear one part in accordance with the amount of insurance not carried as called for in the contract. Four policies pay \$1,200.00, equal to \$4,800.00, the part to be paid by the policyholder as co-insurer on account of the deficit \$1,200.00, total \$6,000.00. Thus you see the insurer failing to carry the amount specified becomes an insurer of \$1,500.00 or the difference between \$6,000.00 and \$7,500.00.

While under the second form of co-insurance clause as submitted with seventy-five per cent, the maximum liability is determined in that it is to be no greater proportion of the amount of loss than the amount of policy bears to three-quarters of the actual value and is stated thus: Three-quarters of the value is to the amount of the policy as the loss is to the liability under the policy (the old rule of three). Example: Take the value of property as \$10,000.00, loss \$6,000.00, amount of policy \$1,500.00, and the proposition would be stated:

$$7500 : 1500 :: 6000 : 1200$$

Now the four policies of \$1,500.00 under this clause pay \$1,200.00 each or \$4,800.00, and the deficit, \$1,500.00, makes up the \$1,200.00, or the total loss of \$6,000.00. Thus, you see that the two clauses work out exactly the same result.

The same will be worked out with any amount of insurance loss and value, each policy, or any number of policies, being liable for its proportion.

If there is an 80 per cent co-insurance clause then four-fifths of the value should be used instead of three-quarters, and if a 90 per cent co-insurance clause then nine-tenths of the value, and if 100 per cent co-insurance clause then ten-tenths, or full value.

The different forms of co-insurance made a part of policies, require that the assured shall carry insurance equal to a certain percentage of the value of the property insured, and if that amount of insurance is not carried, the assured becomes a co-in-

suror to the extent of the difference between amount the clauses require to be carried and amount actually carried. In other words, the assured takes the position of another insurance company to the extent of such difference.

The co-insurance clause does not become operative in case of a total loss but is a factor only when there is a partial loss which destroys a smaller percentage of the value of the property insured than that indicated in the co-insurance clause, for instance:

If the value of property is \$10,000.00, under the seventy-five per cent co-insurance clause, \$7,500.00 should be carried to comply with it; if the insurance is only \$5,000.00, and the loss \$3,500.00, the assured would be a co-insurer to the extent of \$2,500.00 taking the place of another insurance company, and therefore pay one-third of the loss; but if \$7,500.00 was carried, the companies would pay the entire \$3,000.00. If the loss was \$7,500.00 or more, the insurance companies would pay \$5,000.00, the amount insured by them.

Observance of Building Regulations.

Fire waste and insurance premiums both may be materially reduced by observance of the building regulations, prescribed in Chapter 56, Consolidated Statutes, entitled Municipal Corporations, Article 11.

These regulations are mandatory in cities and towns. They are so wise that their voluntary observance outside of cities and towns would be most profitable. Chapter 99, Consolidated Statutes, Fire Protection, is statewide in its application. It must be obeyed. Disobedience to lawful orders or directions of the Insurance Commissioner is made a misdemeanor; each day such disobedience shall continue is a separate offense. The fine is not less than ten nor more than fifty dollars for each offense.

Besides the criminal liability, any one injured in person or property, because of failure to obey the law or the order of the Insurance Commissioner, may have a cause of action against the person or party in fault.

Thus, if persons be killed or injured because of failure to provide fire escapes, or doors opening outwardly, suits for damages against the party at fault are likely to result. If fire originates in

a building constructed with defective walls or flues, or of forbidden materials, and shall extend to other property, the owner of the other property destroyed; or the fire insurance company paying loss on same, may have a good cause of action against the party in fault. Building Regulations and Fire Protection Laws may be obtained from the Insurance Commissioner.

Employers' Liability and Casualty Insurance.

Many employers of labor consider it necessary to carry insurance to protect them at least to some extent against losses resulting from injuries to employees. Under these policies, the liability or indemnity company agrees to assume employer's legal liability to his employees, injured in service by, or on account of, employer's negligence. If employer be not negligent; and on that account legally not liable to the injured employee, the insurer will not be liable except for court costs.

These are not accident or benevolent policies. They do not agree to assume employer's moral obligations; nor repay money expended from charitable or sympathetic impulses. They are contracts to indemnify, within certain limits, the employer held liable for injuries sustained by his employees. A clear understanding of this point is necessary. Otherwise, controversy with the indemnity company is inevitable.

These policies require the insured to give prompt notice to the indemnity or casualty company of any injury to an employee which may be the subject of a claim. If an accident occur and no injury appear at the time of the accident; but later some injury appears or is claimed, prompt notice of the unfavorable development must be given. In short, if the employer claims protection, he must give to the insurer prompt notice of every injury to an employee. This requirement seems both reasonable and necessary.

Corporations may buy protection against almost any manner of loss. Cyclone, explosions, rain, strikes, and they may insure profits while suspended because of fire, strikes or other causes. Credits may be and frequently are insured. All such policies should be carefully read; and their conditions should be fulfilled.

Certificates of Preferred Stock.

Resolutions creating issues of preferred stock often contain restrictions. Sometimes it is provided that the holders of preferred stock shall not have voting power; or shall not have voting

power so long as dividends be paid on the preferred shares. Sometimes it is provided that when dividends on the preferred shares be passed for a given period, usually two years, the preferred stock shall have voting power; and the voting power of the common stock shall be suspended until after all arrears of dividends on the preferred shall have been paid.

Sometimes clauses are inserted forbidding the issue of any more preference shares; or of mortgaging the corporate property, until the issue of preferred stock containing the stipulation shall have been redeemed.

Many other stipulations may be found in the certificates of preferred shares. These conditions are probably enforceable against the corporation and the other shareholders. But to what extent they may be obligatory on creditors is not so certain. Once stock, always stock is a maxim of corporate law. The creditor has a claim superior to the stockholders, and corporation managers are forbidden to pay in any form, any part of the capital stock to shareholders until all the debts of the corporation be paid. Sec. 111. It would seem that any attempt to give the holders of preferred shares, a status ahead of creditors, must necessarily violate both the letter and spirit of the law.

Sometimes a mortgage is given on corporate property to secure an issue of preferred stock; but it is very doubtful if its legality could be sustained. If it be the desire of the corporation to borrow money and secure the same by mortgage, the method is plain and simple. Borrow the money; issue the bonds for same; and secure the bonds by mortgage. This leaves nothing for construction; and the rights of all parties are fixed.

Persons buying preferred stock should ascertain what protection is provided; for unless protected, such stock may be rendered almost worthless by the issue of "prior preferred" or by the creation of debts; or by paying too liberal dividends on the common stock. It seems that prior preferred stock may be issued without the consent or even the knowledge of the holders of preferred stock unless such holders have voting privilege.

Corporate Deeds.

The form of a deed from a corporation is so nearly identical with a deed executed by an individual, that, a form seems hardly worth the space it would occupy. The deed runs in the name of the corporation, and not of its officers. It may recite by what authority it is executed; or this may be omitted, if grantee be satisfied that authority to execute deed had been conferred. Cove-

nants and warranties should be binding upon grantor's "successors", when in a similar conveyance by an individual, they would be upon grantor's "heirs".

It would be well for the corporation to include in the covenants and warranty, a clause to the effect that the execution of the deed had been duly authorized by directors or stockholders or both; and that the persons signing on behalf of the corporation were its officers at the time they signed the deed.

Corporate Mortgages and Deeds of Trust.

It is always worth while to insert in a corporate mortgage or deed of trust, the authority by which the same was executed. Most usually the board of directors recommends that the corporation borrow money, execute its negotiable bonds and secure the payment of said bonds by a conveyance to a trustee of certain or all of the corporate property. The board of directors prepare the form of bonds and deed of trust, confer with the trustee, and call a meeting of stockholders to pass upon the proposition.

Due notice of this meeting must be given in the manner prescribed in the by-laws to each stockholder. A majority of all stockholders must be present at said meeting either in person or by proxy; and the resolutions authorizing the borrowing of the money and the execution of bonds, and of mortgage or deed of trust, must be adopted in open meeting, a quorum being present (in person or proxy). The proceedings in full should be spread upon the minutes; and a copy of same duly certified by the officers and attested under the seal of the corporation delivered to the trustee.

The deed of trust should recite these resolutions and that the meetings were called in accordance with the by-laws and notices of stockholders' meeting given to every stockholder (or that such stockholders as may not have been regularly notified, accepted service and waived other notice); that a quorum of directors were present at the directors' meeting, and that a majority of all stock was represented either in person or by proxy at stockholders' meeting; and that the resolutions were passed in accordance with the by-laws, and were recorded in the corporation record books. These recitals are not necessarily a part of the deed of trust. The deed may omit them and yet be valid and enforceable. But if the deed does not contain these recitals, and if the corporation records be lost, the bondholders and their trustee may

be put to the necessity of proving the due execution of the deed of trust.

It would be almost impossible to sell bonds if the deed of trust did not contain all the recitals necessary to show that the corporation had the right to issue bonds and secure them by mortgage or deed of trust; and that this power had been exercised by the corporation in the method provided in the by-laws.

Several forms for corporation mortgages and deeds of trust are hereinafter given. In different financial centers, different forms are preferred. Sometimes the trustee is a natural person; but generally the trustee is a corporation. In some sections, and particularly in Ohio, Indiana and Illinois, the deed of trust is executed to two trustees, a corporation and an individual.

The Expanding Mortgage.

One kind of deed of trust deserves special mention as it is coming more and more in use. This is the "open" or "expanding" mortgage. It secures a given number of bonds at its execution, and it provides for successive issue (within a given limit) as the corporation may require and as the increase in its assets and earnings may justify. The corporation applies to the trustee for leave to issue, and for certification by the trustee, of additional bonds. It sets forth the net earnings, and shows the surplus after paying operating expenses, fixed charges and interest. It shows what additions to, or enlargements of, the property have been made or are to be made, and to what probable extent the net earnings of the company will be increased. It files a certificate of ownership of the additions, extensions or improvements made; or of the new property to be acquired; together with an appraisal of same made by some engineer or expert named by the trustee.

If the trustee shall approve, consent is given for the issue of bonds in such an amount as the trustee shall designate. These bonds, when issued, shall be equal in dignity with the bonds originally issued. Their lien upon and rights against the assets and property of the issuing corporation shall be the same as if they had been of the original issue. So long as the corporation shall have issued less than the maximum authorized by the deed of trust the mortgage or deed of trust is called "open". When the maximum shall have been reached, it is called "closed".

The expanding mortgage is one particularly adapted to the needs of public service corporations, the highest obligation of which is to render to the public the services required in their franchise contracts. As the communities served by these corpora-

tions grow, the demands on the corporations increase. Service, to at least the extent prescribed in the franchise contract, must be provided. The public entitled to this service, is the creditor of highest dignity. The public has a claim for service which is superior to the lien of bondholders secured by a first mortgage. The public must be served, to the extent provided for in the franchise, even though interest cannot be paid upon first mortgage bonds.

In short, as to the public, the holders of bonds of a public service corporation are stockholders. They may have their compensation only after the corporation shall have performed the duties and obligations to the public which it assumed when it accepted the franchise. The duty to enlarge is often imperative. If it does not enlarge, it must liquidate. It must enlarge, or forfeit its franchise; and if the franchise be forfeited, the physical properties decline sometime to their removal values. The investment may become almost a total loss; whereas, with moderate expenditures for enlargements and improvements, the franchise might be preserved and the earnings greatly increased.

If the property be covered by a "closed" mortgage, new money can only be raised by the sale of second mortgage bonds. They are often hard, and sometimes impossible, to sell. If the property be encumbered with a mortgage still "open", the additional money can usually be more easily obtained by selling bonds. The issue will have already been introduced; and persons owning bonds on which interest has regularly been paid, and by a corporation with which they are familiar, will be more likely than strangers, to buy more bonds of the same kind. An expanding mortgage is strongly recommended to all public service corporations. It is available for other corporations; but, because of the absence of public duties, not so necessary. The form and machinery for an expanding mortgage is given on Page 701.

The corporation which executed this mortgage is not engaged in business in this state; but the form has been changed to conform to our laws.

Merger of Corporations Not Provided For.

There is no provision for the merger of corporations. There are few instances of merger; and those are of railroads; and were accomplished by means of private acts of the general assembly and sustained by the Supreme Court, as a justifiable exercise of the power of eminent domain. The private act provides a method by which shares of stock may be valued, and the act requires the shareholder, even though he be unwilling, to surrender the

shares and accept the price fixed in the method prescribed. The leading, and probably the only case, on merger is *Spencer vs. Seaboard Air Line Railway*, 137 N. C. 107, 49 S. E. 96.

It would seem that the right to merge one corporation with another and to require stockholders of one to accept stock in some other company, might be provided for in the certificate of incorporation. It is a contractual right, and there would seem to be no reason why incorporators might not reserve to themselves and their successors this right. But the fundamentals of the plan or merger should be set out in the certificate of incorporation and referred to in the certificate of stock, so as to put all stockholders and their successors upon notice.

For charter of corporation providing for merger see page 625.

Reports to Stockholders.

The annual report should be full and explicit; and it should be framed in plain terms, easily understood by a person of ordinary intelligence. A report which can only be understood by a person with knowledge of bookkeeping is not a fulfillment of the officer's duty to the shareholders. Many of the best managed corporations, not only make full and understandable annual reports, but also furnish quarterly reports with the dividend checks. These quarterly reports compare the earnings for the current quarter with those of the previous quarter; and with the corresponding quarter of the previous year. The annual report, followed by such quarterly reports, enables the shareholder to keep informed of the condition of the corporation to which he has entrusted his money. He is entitled to this information.

Here are quarterly statements made by two of the largest and most successful corporations. They may serve as models:

RAILROAD COMPANY.

	Month of Nov. 1921	Period eleven months ended Nov. 30, 1921	This year compared with last year	
			+Increase	-Decrease
Average miles of road operated	11 225 27	11 196 15	Month + 40 58	Period + 49 04
REVENUES:				
Freight	\$15 504 871 80	\$168 079 200 73	— \$1 831 230 19	+ \$ 608 115 27
Passenger	4 394 866 27	58 582 370 90	— 2 769 585 64	+ 6 482 654 78
Mail	287 113 21	3 267 935 78	— 5 716 30	+ 2 914 952 33
Express	785 454 19	7 572 118 76	+ 143 036 73	+ 1 002 493 98
All other transportation	469 177 62	5 241 164 53	+ 43 735 42	+ 899 791 17
Incidental	493 444 63	6 432 249 99	— 210 082 79	+ 1 140 158 17
Joint facility—Cr.	11 583 00	149 987 79	+ 6 028 31	+ 59 673 24
Joint facility—Dr.	7 500 40	52 733 43	+ 4 509 56	+ 24 262 39
Railway operating Revenues	21 939 010 32	249 272 295 05	— 4 715 794 86	+ 7 991 964 01
EXPENSES:				
Maintenance of way and structures	3 680 686 52	38 721 233 51	— 345 067 67	+ 5 220 809 19
Maintenance of equipment	3 981 613 92	44 061 295 88	— 1 769 095 10	+ 12 003 938 97
Traffic	296 659 08	3 783 775 50	— 29 547 87	+ 29 617 409 68
Transportation	8 138 790 53	94 799 698 16	— 2 522 275 52	+ 11 572 507 61
Miscellaneous	290 294 39	3 853 832 12	— 165 319 37	+ 1 253 220 92
General	659 811 30	7 781 343 06	— 106 770 43	+ 400 536 46
Transportation for in- vestment—Cr.	28 998 82	383 373 38	+ 13 075 03	+ 109 839 81
Railway operating ex- penses	17 018 856 92	192 617 804 85	— 4 925 000 93	+ 29 142 370 36
INCOME:				
Net revenue from railway operations	4 920 153 40	56 654 490 20	+ 209 206 07	+ 21 150 406 35
Railway tax accruals	1 776 840 36	14 229 559 80	+ 578 366 46	+ 264 430 25
Uncollectible railway re- venues	12 094 25	69 637 60	+ 9 277 40	+ 38 694 04
Equipment rents (Net)	495 305 19	4 779 836 54	+ 162 744 43	+ 705 007 20
Joint facility rent (Net)	† 4 769 15	156 400 42	— 1 502 73	+ 649 389 57
Net Railway Operating Income	2 640 682 75	37 419 055 84	— 217 196 09	+ 19 570 273 37

Net railway operating income for same month and period of previous five years

Net railway operating income	Month of November	Period eleven Months ended Nov. 28	This year compared with previous years.	
			+ Increase	- Decrease
			Month	Period
1920	\$2 857 878 84	\$17 848 782 47	\$ 217 196 09	+ \$19 570 273 37
do. 1919	5 066 501 52	36 782 431 41	2 425 818 77	+ 636 624 43
do. 1918	3 535 543 05	48 658 255 43	894 860 30	+ 11 239 199 59
do. 1917	5 164 617 70	58 073 622 40	2 523 934 95	+ 20 654 566 56
do. 1916	5 470 607 20	47 905 056 83	2 829 924 45	+ 10 486 000 99

†Credit. *Revenues for January, 1920, included back mail pay amounting to \$2,235,171.

STATEMENT OF CORPORATION
For the Quarter ending September 30th, 1921.

EARNINGS

	Earnings before charging Interest on the Subsidiary Coa. Bonds outstanding	Less: Interest on the Subsidiary Companies Bonds Outstanding	Balance of Earnings
JULY 1921	\$ 5,824,438	\$ 667,043	\$5,157,395
AUGUST 1921	7,168,145	665,228	6,502,916
SEPTEMBER 1921	7,923,915	666,228	7,257,687
	<u>\$20,916,498</u>	<u>\$1,998,440</u>	
Total Earnings after deducting all expenses incidental to operations, comprising those for ordinary repairs and maintenance of plants, also estimated taxes including estimate for Federal income taxes, and interest on bonds of the subsidiary companies,.....			\$18,918,058
Less, Charges and Allowances for Depreciation, applied as follows, viz.:			
To Depreciation and Extraordinary Replacement Funds and Sinking Funds on Bonds of Subsidiary Companies.....			\$9,902,363
To Sinking Funds on Corporation Bonds			2,241,433
			<u>8,143,796</u>
Net Income			\$10,774,262
Deduct: Interest for the quarter on Bonds Outstanding.....		\$4,891,066	
Premium on Bonds redeemed.....		190,000	
			<u>5,081,066</u>
Balance			\$5,693,196
Dividends on stocks of the Corporation, viz.:			
Preferred, 14 3/4%		\$6,304,919	
Common, 1 3/4%		6,353,781	
			<u>12,658,700</u>
Balance Provided from Undivided Surplus			<u>\$6,965,904</u>

Comptroller

*Dividends Payable:

Preferred, Nov. 29, 1921; books close Oct. 31, open Nov. 2.
Common, Dec. 30, 1921; books close Nov. 29, open Dec. 1.

UNFILLED ORDERS ON HAND.

September 30th, 1921,4,560,670 Tons.

Corporations Incapable of Earning Profits Should Liquidate.

Hope of profit is the chief inducement to the purchase of corporate securities; and if in the operation of the corporation, it shall be demonstrated that profits cannot be earned, it becomes the duty of the management to put an end to the loss; and, if necessary, suspend operations and liquidate the company.

Officers of a corporation render the shareholders a distinct disservice, when they continue an unprofitable business until utter insolvency is the result. Far better to liquidate while there remain some assets for distribution. But some managers, hope against hope, fight a losing battle; encourage shareholders with illusory prospects, until the business is a wreck, the capital dis-

sipated; and there be nothing left for stockholders, and often little for creditors.

To guard against such conditions, frequent examinations of the corporation should be made by competent and fearless accountants, whose personal integrity is above question. These examinations should be made at irregular and unexpected intervals. They should be thorough or they should not be attempted. The facts ascertained belong to and should be furnished the shareholders. The secrets of a corporation belong to the shareholders and not to the officers alone. The shareholder is entitled to this because only in this way may he know the value of his property. He has the right to know the good, so he may not be persuaded to sell his stock for less than value; and he has the right to know the bad so he may take action to improve conditions.

The state and federal income tax laws require a pretty thorough ascertainment of the condition of corporations; and a by-law requiring the management to preserve copies of the reports made to the commissioner of revenue and to the collector of internal revenue, would provide a useful "starting point" for an audit.

Receiverships.

A receivership may be decreed before the corporation becomes actually insolvent. If it suspends business for want of funds; or be in imminent danger of insolvency, a receiver may be appointed. Sec. 140. But the appointment of a receiver is a desperate remedy; and if possible it should be avoided. If decreed, the purpose is to save as much from the wreck as may be savable. Seldom should a receiver be appointed for a going concern without notice and hearing. Not only should the corporation be given notice and an opportunity to be heard, but creditors, stockholders and all other persons interested should have notice and a hearing.

Upon the institution of the suit and application for receivership, the court has authority to issue a temporary restraining order, forbidding and enjoining any transfer or change in the corporate property pending the hearing. Payment of corporate funds for any purpose whatsoever may likewise be enjoined pending the hearing; but it is usual to permit the payment of current wages. The rights of the parties can thus be fully protected, while an opportunity is given to those interested in the corporation to show why, if they can, a receiver should not be appointed.

Sometimes the hearing results in the adoption of measures which relieve the embarrassment and enable the corporation to proceed. A conference of interested parties sometimes renders

the appointment of a receiver unnecessary. After this hearing, if it become apparent that a receivership is inevitable, it may be that those interested in the corporation can agree upon a person to be appointed. Where all parties agree upon a receiver, the court may appoint him with confidence. Under these circumstances, one may be appointed receiver who otherwise might be considered ineligible. As a rule the courts do not favor the appointment as receiver of any one who has had a prominent part in the management which resulted in the application to the court for protection. Ordinarily, those who have managed the corporation into insolvency should not expect to be selected to manage it under the direction of the court.

It is not usual to appoint as receiver one who holds any special relation to the property, as mortgagee or creditor. Courts prefer to select as receiver a person whose impartiality as well as whose ability and integrity is beyond doubt. When, however, all persons interested agree that a certain person is best qualified to be receiver and ask for his appointment, the court is justified in acting upon this suggestion, even though under the ordinary rules of equity such man would be excluded.

Other things being equal the courts prefer to appoint a person who has not theretofore been intimately connected with the property. One of the reasons for this is that under the laws of this state a receiver is also referee. He hears and passes upon claims and priorities. He reports his finding to the court, and a person dissatisfied with his report may file exceptions, have a hearing by the court, or, if they prefer, by the jury, with an appeal to the supreme court. It is, therefore, highly important that the man who will not only manage the property, but, in the first instance adjudicates claims against it and the priorities relating thereto, should be impartial and should not be so situate as to be embarrassed by his connection with the property or claimants thereto. The receiver should be a competent man. He should be one who can give the trust the necessary attention, and who will not expect compensation out of proportion to the estate committed to his care. A person seeking the place should seldom be appointed. Self-nominated receivers are seldom successful administrators.

Appointment as a receiver should be regarded as a solemn trust, to be administered with impartiality, prudence and absolute fidelity. It should not be considered a wind-fall or an opportunity for personal profit beyond the compensation fixed by the

court within the limits provided by statute. The compensation provided by statute must not exceed 5% upon monies collected and on monies paid out by the receiver. Sec. 147. If the estate be large, commissions at these rates may be excessive, and the court will allow less. 5% on receipts and disbursements constitute the maximum and are not to be considered usual or standard rates. Within this limitation the judge may fix compensation with due regard to the services rendered and the results obtained.

Appointment, Qualifications and Initial Duties.

The receiver upon appointment shall give the bond required by the court appointing him. Sec. 141. Immediately after his appointment, he should give to creditors and persons interested the notice prescribed by the court for filing claims. Sec. 144.

Within thirty days after his appointment, he should lay before the court a full and complete inventory of all the property and effects of the corporation and an account of all debts due to or from it, as nearly as can be ascertained; and shall make a report of his proceedings to the superior court at every civil term during the continuance of the trust. Sec. 142.

He may send for persons and papers; and may examine under oath creditors, claimants, and the president, officers, directors and agents of the corporation, respecting the affairs of the corporation. Refusal to answer on such examination may be reported to the court; and by the court punished as contempt. Sec. 143.

He shall, as referee, report to the next term of court, after his finding upon any claim against the corporation, and exceptions to his finding may be filed within ten days after notice, and not later than within the first ten days of the term, of the finding by any person interested. Jury trial may be demanded, and issues made up by the court and submitted to the jury. Sec. 145.

It is competent for the receiver, if he thinks proper to do so, to make recommendations concerning the operation of the property, its continuance in business; and if a reorganization be necessary it is proper for him to make recommendations with regard to the same, and suggest how it may be best accomplished, having due regard to the rights and interests of creditors and stockholders.

Receiver's Administration Duties.

First, to ascertain if the corporation is to be reorganized or liquidated. A conference of stockholders and creditors is often of advantage. The stockholders must decide whether they have an equity worth saving. If so, they must arrange to finance the

reorganization. If they decide not to do this, they should consider whether they shall advise a quick sale of the corporation assets free of all liens; liens being remitted to the fund arising from sale; or whether they will advise that the corporation be operated by the receiver and a sale postponed. Operations by a receiver are seldom profitable; and a speedy sale is often best.

Should stockholders decide not to reorganize the corporation, its administration becomes a creditors' problem. They should advise the court and the receiver whether they prefer it quickly sold, or operated by the receiver. Their request usually has weight because the creditors are then the real owners and the only ones interested.

Creditors can bring about economy and efficiency by appointing a creditors' committee, and giving to it power of attorney. This committee may employ counsel, and the service rendered will usually be superior to service rendered by numerous attorneys representing different creditors. This committee should be representative of the various classes of creditors, and if practicable, it should adjust priorities between creditors. If this cannot be done, each class of creditors should have its own committee and counsel.

A creditors' committee may do, without impropriety, what no attorney would care to do. It can with perfect propriety publish a notice and permit or invite creditors to join. This committee may with entire propriety formulate plans for the protection of creditors, the purchase of the property, and the formation of a new corporation, if such course be deemed advisable.

If stockholders and creditors, or either, shall arrange to care for the debts and re-establish the corporation, the receiver should regard their efforts with favor and give them a reasonable opportunity to accomplish their purpose. He should render any reasonable assistance, provided the interest of creditors and those persons interested, but not joining in the re-organizing, be not put in greater jeopardy. But if there be no effort to re-organize, or if such effort be made and shall fail, the receiver then becomes the sole manager of the corporation, subject to the direction and control of the court. The position demands speedy and often stern action.

The receiver should investigate and ascertain if corporate property has been wrongfully disposed of; or corporate funds illegally paid and if so, to whom. He should ascertain whether res-

titution or recovery suits should be instituted, and if so, against whom.

He should ascertain whether or not the stock issued or subscribed for had been paid for. He should inquire whether dividends had been paid out of any funds except the net surplus; or whether dividends had been paid when the debts exceeded two-thirds the value of the corporate assets. He should inquire whether the corporation books and records had been properly kept and are available. If the books cannot be produced he should ascertain, if possible, who had them last and what reason that person gives for their non-production. This information should be reported to court with such comment and recommendations as the receiver thinks proper. If probable grounds seemed to exist, restitution suits should be promptly instituted and vigorously pressed. The successful prosecution of such actions, depends no little upon the speed with which the receiver acts. The evidence necessary to win is apt to disappear. Those liable may dispose of their property. In any event the suits grow stale and interest is lost, if there be delay.

If a receiver elects to bring suits to enforce stockholders' or directors' liability, or to recover money illegally paid or property illegally disposed of, he must act promptly, bravely and, if necessary, invoke the criminal code. If he is unwilling to so act, he should resign. Strong pressure is often brought to dissuade a receiver from instituting suits of the character aforesaid, and comparatively few such suits are instituted.

The receiver should consider whether the business of the corporation should be continued or closed; and he should make recommendation to the court. Few receiverships are able to show a profit. Most of them operate at a loss; often at heavy loss. The physical condition of the property seldom improves during a receivership. The position of the corporation in the commercial world is seldom maintained during a receivership. There are only enough exceptions to prove the rule.

This is not surprising; and it is no evidence of incompetence or negligence on the part of the receiver. The receiver was appointed because the corporation had become insolvent or was in imminent danger of insolvency; or was unable to carry on its business for lack of funds; or because its officers had committed some unlawful or ultra vires act. It was stranded and could go no further. Under these conditions a receiver could hardly be

expected to make and earn profits, when the owners had so completely failed.

The corporation must always have additional capital or credit before it can be placed upon an earning basis. The receiver can seldom supply either; and a sale becomes necessary unless stockholder and creditors will supply the necessary capital. It is almost impossible to secure unanimous action on their part; and the alternative is a sale of the corporation property. This sale should be made soon as its necessity becomes apparent. Generally it is best to sell the property freed of all liens; with the right to lien holders to claim pay from the proceeds.

Receiver's Certificates.

If the corporation be a public service corporation enjoying and exercising a franchise, the court has the undoubted power to authorize the receiver to borrow money and to secure same by the issue of certificates which shall be a first lien upon the property of the corporation, and which will displace and supersede all other liens and mortgages, though valid and registered. This is because the first duty of the corporation is to perform its franchise obligations. The public, which the corporation has agreed to serve, is the creditor of highest dignity. The public has the first and highest claim upon the corporation's property. The public is entitled to service; subject only to the right of the corporation to demand and receive reasonable compensation for services rendered.

The courts have the power to authorize and to require the application of all corporate assets to the performance of its public duties; and the issue of receiver's certificates is one method of the exercise of this power. The exercise of this power often preserves to the corporation its franchise contracts without which its property would have but little value. The issue of receiver's certificates is often of great advantage to the corporation as well as to the public. The power of the court to order their issue in a proper case is no longer questioned. But they should never be issued without notice to the corporation, to the trustee of the bondholders and to the holders of all registered liens. If necessary, notice should be given by publication.

Receiver's certificates, issued after notice to all lien holders and creditors and after a hearing, upon the property of a public service corporation, for the purpose of enabling it to continue to

render the services required of it in its charter or franchise contract, are securities of high character. When not so issued, they are exceedingly doubtful. The purchaser of such certificates does not obtain a negotiable instrument. He cannot rely upon the court's order directing the issue. He is charged with notice of the entire proceeding; and if there be error or irregularity, he is at most only subrogated to the rights of the person to whom the certificate was first issued. Large sums of money have been lost in the purchase of receiver's certificates illegally, irregularly or improperly issued.

If the corporation be not charged with public duties it seems settled that receiver's certificates cannot be issued, except by the consent of all creditors holding liens. It is doubtful if they can be legally issued, except by the consent of all creditors. It seems that the courts have no power to compel a mortgagee of the property of a private corporation to suffer a displacement of his lien. It may, and often is, to his advantage to permit a prior lien to be placed upon the property against which he holds a first mortgage. But he has the right of decision. He may consent, but it would seem that the court cannot compel his consent.

There are few North Carolina decisions on the subject of receiver's certificates. When the courts have discussed them, they seem not to be favorably impressed. In *Fisher v. Southern Loan & Trust Co.*, 138 N. C. 90, 50 S. E. 592, Judge Connor used this language:

"We very much doubt whether it is within the power of the court in a proceeding like this to authorize the issuance of receiver's certificates. This practice which has grown up of late years is very largely confined to the Federal Courts in suits for the foreclosure of mortgages and trust deeds executed by railway companies and other corporations, whose property is affected by a public duty. We are not prepared to say that these certificates may not be authorized in similar suits dealing with corporations such as cotton or other mills, machine shops, etc., in all of which it is of vital interest to creditors and owners that their operations be continued until they can be brought to sale. If such power exists it should not be exercised until notice has been given to creditors. High on Receivers, 312."

Two North Carolina cases involving the legality of receiver's certificates have been decided in the Circuit Court of Appeals for the Fourth Circuit. The first was *Bernard v. Union Trust Co.*, 159 Fed. 620, 86 C. C. A. 610. The Court held that:

"Where neither the trustee nor the bondholders under a corporate trust deed were parties to a proceeding against the corporation in which a receiver was appointed when an order was passed authorizing the receiver to issue a certificate in payment for certain indebtedness for supplies to the corporation, such bondholders were not concluded by the order in so far as it directed that the certificate should constitute a first lien on the corporation property.

"Where a receiver was appointed for a strictly private corporation and applied for permission to issue a receiver's certificate in payment for supplies furnished to the corporation prior to his appointment, which claim was not secured by any lien on the corporation's assets, it was error for the court, in authorizing such certificate, to direct that it should constitute a first lien on all the corporation's property as against non-consenting bondholders secured by a deed of trust on the corporation's property.

"A receiver's certificate issued under an order authorizing the issuance of a 'negotiable' certificate was not negotiable within the law merchant so as to relieve the purchaser or his assignee from equities arising out of the proceedings in the case.

"The court below finds as a fact that neither the trustee nor the bondholders were parties to the cause when the order was filed authorizing this certificate to be issued, and there is nothing in the record that impeaches the correctness of such finding. 'When such prior lienholders are brought before the court they become entitled upon the plainest principles of justice and equity to contest the necessity, validity, effect and amount of all such certificates as fully as if such questions were then for the first time presented for determination.' *Union Trust Company v. Ill. Ry. Co.*, 117 U. S. 460, 6 Sup. Ct. 823 (29 L. Ed. 963). The receiver's certificate here must be considered merely an evidence of indebtedness, and can have no higher character than the debts which it represents.

"Those debts were for the purchase of supplies by the sawmill company, such as were ordinarily used by companies engaged in a like business, some months before the commencement of the suit in which the receiver was appointed. They were secured by no lien, entitled to no preference. As neither the trustee nor the bondholders came into the court initially asking the aid of equity in the administration of the property, one of the elements is lacking to support the doctrine commonly invoked, that those who

ask the aid of the court to maintain their property are to be considered as consenting to all the necessary means. Most of the cases cited have arisen in railway foreclosures, where the power of a court of equity to authorize the issue of certificates by receivers, and to make them a first lien upon the property payable before the first mortgage bonds, has been upheld in numerous cases. In some of them stress is laid upon the fact that a railroad is a peculiar property, in which the public has an interest and wherever there is a demonstrated necessity for supplies for its maintenance and operation receiver's certificates for such expenses have been allowed priority. So, too, receiver's certificates issued to borrow money to pay taxes are allowed preference, but that rests upon the ground that taxes are always a first lien upon all property, and there is only a substitution of one lien for another. No case has been cited wherein the Supreme Court of the United States has given its sanction to an issue by a private corporation, not affected with any public interest, of receiver's certificates to displace vested liens. The Circuit Court of Appeals for the Eighth Circuit, in *Hanna v. State Trust Co.*, 70 Fed. 5, 16 C. C. A. 586, 30 L. R. A. 201, has expressly declared that the court could not, against the objections of the first mortgagees, displace their liens by the issue of certificates to carry on the business of a corporation whose business was of a private nature. So, too, the Circuit Court of Appeals of this, the Fourth Circuit, has held in *Baltimore Building & Loan Association v. Alderson*, 90 Fed. 147, 32 C. C. A. 547, that 'in the case of private corporations the court cannot authorize the issue of receiver's certificates for the purpose of improving, adding to, or carrying on the business of a company without first having the consent of creditors whose liens would be affected thereby.' In *Wood v. Guarantee Trust Company*, 128 U. S. 421, 9 Sup. Ct. 132, 32 L. Ed. 472, the Supreme Court says:

'Thirdly, the doctrine of *Fosdick v. Schall*, 99 U. S. 235, 25 L. Ed. 339, has never yet been applied in any case except that of a railroad. The case lays great emphasis on the consideration that a railroad is a peculiar property, of a public nature, discharging a great public work. There is a broad distinction between such a case and that of a purely private concern.' It is unnecessary to decide this question, for it was conceded that it was the proper function of a court of equity to carry on the business of a saw-mill, the debt was not incurred by the court for that purpose. The certificate was not issued for the purchase of supplies for the

preservation or improvement of the property while it was in the custody of the court, and to keep it a going concern; but for an indebtedness incurred some months before the court took charge of the property, for which the creditor had no lien under the law. There can be no presumption of consent by bondholders or trustee, because neither were parties to the cause in which it was issued. It cannot rest upon the equitable doctrine that there has been a diversion of income or funds to the use and benefit of the mortgage bondholders, for there has been no such diversion. All the authorities agree that the power to issue certificates of indebtedness and to make them a first lien is a power liable to great abuse, and to be sparingly exercised, and no case has been cited or found wherein a certificate issued by the receiver of a private corporation, in circumstances at all analogous to those appearing in this record, has been allowed priority over the mortgage bondholders.

“As to the claim of C. M. Bernard that he is an innocent purchaser without notice and for value, it is sufficient to say that although it be true that by the terms of the order the receiver was authorized and empowered to issue a negotiable receiver's certificate, he cannot claim to hold as an innocent purchaser without notice, in the sense which that phrase imports, for certificates of this kind have not the quality of negotiable instruments under the law merchant. They are not commercial paper, and the purchaser or assignee can only recover upon them to the extent of the rights of the first payee. He is put upon inquiry as to all that was done in the cause wherein the certificates are issued and chargeable with notice. As said by the court in *Union Trust Co. v. Ill. Midland Co.*, 117 U. S. 456, 6 Sup. Ct. 809, 29 L. Ed. 963:

“The receiver and those lending money to him on certificates issued and orders made without prior notice to the parties interested take the risk of the final action of the court in regard to the loans. The court always retains control of the matter; its records are accessible to lenders and subsequent holders, and the certificates are not negotiable instruments.

“The decree of the Circuit Court is affirmed.”

The second case is *Union Trust Co. v. Southern Sawmills & Lumber Co.*, 166 Fed. 193, 92 C. C. A. 101. Here the court held:

“In a creditors' suit against a private corporation to which neither the bondholders of the corporation nor the trustee in the

mortgage securing the same are parties, the court has no authority to issue receivers' certificates for pre-existing debts of the corporation and make the same a first lien on its property."

DECLARATION OF TRUST

as a substitute for
INCORPORATION.

Sometimes the purpose for which a corporation is formed may just as well be accomplished by a declaration of trust, with less expense.

This is particularly true when the business to be done is of a temporary character, and likely to be completed within a comparatively short time. Development and sale of real estate, manufacturing timber from a particular forest, the completion of a certain building or construction contract, exploration for minerals or oil, may all be carried on under a declaration of trust, with a saving of fees, expenses and taxes.

Declarations of trust have not come into general use in this state; but are growing rapidly in favor in some industrial and financial centers. They are particularly popular in Massachusetts and Maryland. A friend in the latter state gives us a form much in use in Maryland and which has been found very serviceable. It is self-explanatory, and will serve as a suggestion, if not a model, for draughtsmen in this state.

This is the form: .

INDENTURE OF TRUST

ROBERTS POOL SYNDICATE

This Declaration and Indenture of Trust, made this _____ day of December, in the year nineteen hundred and _____, by _____, all being of full legal age, on behalf of themselves individually and of those who may hereafter become parties to this Agreement by the payment of money or its equivalent into the Trust Fund hereby created, in the manner hereinafter provided, their executors and administrators, successors, and assigns, for the purpose herein expressed, parties of the first part, cestuis que trustent, and _____ Trustees;

WHEREAS, the said _____ have been advised and are of the opinion that there is opportunity for profitable investment in the business of developing oil and gas properties, and that they are of the belief that such investments can be made more profitable by being managed by a Trustee or

Trustees, possessed of special knowledge of the drilling and developing of oil and gas lands; and

WHEREAS, The said ----- are desirous of investing various sums in this business and of allowing other persons to invest in the said business by complying with the terms of this agreement, and that the entire investment should not exceed Thirty-Five Thousand (\$35,000.00) Dollars, and that the entire amount of said investment should be entrusted into the hands of a Trustee or Trustees for a period of three years, the said Trustee or Trustees to be chosen because of his or their special qualifications to care for such investment and to have entire management of said fund and its employment with regard to the best interests of the cestuis que trustent.

Now, therefore, this Declaration of Indenture of Trust Witnesseth:

I.

Designation.

That there shall be and hereby is created a trust fund to be administered by a Trustee or Trustees, which shall be designated the "Roberts Pool Syndicate."

II.

Declaration—Not a Partnership—Cestuis not Liable.

That the said Trustee or Trustees shall hold all the funds and property (hereinafter called the "Trust Fund"), now or hereafter held by or paid to, or transferred or conveyed to them or their successors as Trustees, hereunder in trust for the purposes, with the powers and subject to limitations hereinafter declared, for the benefit of the cestuis que trustent, and it is hereby expressly declared that a trust, and not a partnership, is hereby created; that neither the Trustee or Trustees nor the cestuis que trustent shall ever be personally liable hereunder as partners or otherwise, but that for all debts the Trustee or Trustees shall be liable as such to the extent of the Trust Fund only. In all contracts or instruments creating liability, it shall be expressly stipulated that the cestuis que trustent shall not be liable.

III.

Purpose of Creation of Trust.

This trust is created for the purpose of more profitably conducting the business of producing, developing and dealing in oil properties by placing the management of such business with a

Trustee or Trustees who are selected because of their special knowledge and experience in this business.

IV.

Duration of Trust.

This trust shall continue for a period of three years from the date of its execution unless terminated sooner in the manner hereinafter provided.

V.

Principal Office.

The headquarters or principal office or place of business of the Trustee or Trustees shall be located at Raleigh, in the state of North Carolina, but may be transferred to such other place or places, and branch offices or places of business may be established at such place or places of business, within or without the State of North Carolina, as may be determined from time to time by the Trustee or Trustees.

VI.

The Trustee or Trustees.

Messrs. _____, the Trustees named herein, may associate with themselves at their discretion, not more than two persons as Trustees who shall be residents of the State of North Carolina, and each of whom, after qualification as a Trustee, by accepting this Declaration and Indenture of Trust and by executing and recording this acceptance in proper form in the office of the Clerk of Superior Court of Wake County, North Carolina, shall have co-ordinate power with the said _____ in the management and care of the said Trust Fund. A majority of the Trustees may at all times be competent to act in the administration of the Trust, under the terms of this Declaration and in conformity with such rules or by-laws as have been or may be from time to time adopted by the Trustee or Trustees.

VII.

Powers of Trustee or Trustees.

The Trustee or Trustees shall have as full power and discretion as if absolute owner;

(a) To generally engage in the business for which this Trust Fund is created and to invest and reinvest the Trust Fund (including any surplus and also income) in personal or real property and to do any and all things necessary to carry out the purposes of the creation of this Trust.

The purposes for which and for any of which the Trust Fund is formed and the business and objects to be carried on and promoted by the Trustees are as follows:

To mine, bore, dig, pump and otherwise produce petroleum and other oils, natural gas and mineral substances and products, to manufacture, produce, refine, prepare, buy, sell, transport and otherwise deal in petroleum and other oils, natural gas, mineral substances and products, and similar articles, and to buy, lease or otherwise acquire and dispose of mineral, oil and other lands, as well as grants, rights and privileges in connection therewith, and to work, bore, project, pump, operate and promote the same, either alone or in association with others, and to receive and give profit sharing certificates, royalty certificates or other certificates in connection therewith as well as to do everything in connection therewith which may tend to promote or benefit the said business.

To acquire by purchase, lease, or otherwise, the property, rights, business, good will, franchises and assets of every kind of any corporation, association, firm or individual carrying on in whole or in part the aforesaid businesses, or either of them, or any other business in whole or in part that the Trustee or Trustees may be authorized to carry on, and to undertake, guarantee, assume and pay the indebtedness and liabilities thereof and to pay for any property, rights, business, good will, franchises and assets so acquired in the certificates of interest, bonds or other securities of the Trustee or Trustees or otherwise.

To apply for, acquire, hold, use, sell, mortgage, license, assign or otherwise dispose of letters patent of the United States or any foreign country, and any and all patent rights, licenses, privileges, inventions, improvements, processes and trade-marks relating to or useful in connection with any business carried on by the Trustee or Trustees.

To carry on any other business (whether manufacturing or otherwise) which may seem to the Trustee or Trustees to be calculated directly or indirectly to effectuate the aforesaid objects, or either of them, to facilitate it in the transaction of its aforesaid business, or any part thereof, or in the transaction of any other business that may be calculated directly or indirectly to effectuate the aforesaid objects, or either of them, to facilitate it in the transaction of its aforesaid business, or any part thereof, or in the transaction of any other business that may be calculated,

directly or indirectly, to enhance the value of its property and rights.

(b) The Trustee or Trustees shall have full power and discretion to sell, transfer, and convey, from time to time, at public or private sale, any part or all of said Trust Fund, upon such terms and conditions as they see fit, and to invest the proceeds in the same manner, and upon the same trusts as the original fund.

(c) The Trustee or Trustees shall also have power at any time to borrow money, and to pledge, as collateral security for such loan, any personal property belonging to the Trust Fund, provided, however, that no loan shall be contracted for, so that the aggregate amount of such loans outstanding shall at such time exceed, in the judgment of the Trustee or Trustees, twenty-five per cent of the total amount of the Trust Fund.

(d) The execution of all contracts, of all conveyances and transfers, and of all other instruments relating to the said fund or any parts thereof by a majority of the Trustees duly qualified shall always be sufficient and no purchaser, lender, corporation, association, or transfer agent thereof, dealing with the Trustee, or Trustees shall be bound to make any inquiry concerning the validity of any sale, pledge, loan or purchase purporting to be made by the Trustee or Trustees, or be liable for the application of money paid or loaned.

VIII.

Regulation, Officers and Compensation.

The Trustee or Trustees may from time to time adopt and promulgate such regulations or by-laws for the management of the Trust Fund as he or they shall deem desirable, and he or they may appoint and remove suitable officers or agents for carrying out the purposes of this trust and may define their duties and affix their compensation. The compensation of each Trustee shall not exceed One Thousand (\$1,000.00) Dollars per annum and the compensation of all Trustees shall not exceed Three Thousand (\$3,000.00) Dollars per annum.

IX.

Books Open to Inspection.

The Trustee or Trustees shall render an account annually, or oftener if convenient to them, and shall, upon request, deliver or mail a copy of such account to each cestui que trust. The books

of the Trustee or Trustees shall always be open to the inspection of the cestuis que trustent.

X.

Trustees' Liability.

Each Trustee shall be liable only for his own breach of trust and not for one another. No Trustee shall be required to give a bond.

XI.

Payment Into Trust Fund.

The Trust Fund hereby created shall not exceed Thirty-Five Thousand (\$35,000.00) Dollars and payment or subscription to this fund may be accepted by the Trustee or Trustees, in cash, and the Trustee or Trustees shall secure from each subscriber or contributor to the said Trust Fund satisfactory evidence that the payment was made under the terms of this Declaration and Indenture of Trust. The trust hereby imposed is not contingent upon the full authorized sum of Thirty-Five Thousand (\$35,000.00) Dollars, or any other amount, being subscribed, but is effective in all its terms for any smaller amount.

XII.

Shares.

The Trust Fund shall be divided into Fourteen Hundred (1400) shares of beneficial interest which shall have a nominal or face value of Twenty-five (\$25.00) Dollars each.

The Trustee or Trustees may declare such dividends out of the net income of the Trust Fund as they may deem advisable, and the decision of the Trustee or Trustees as to the amount of dividend and as to using therefor any portion of surplus shall be final. Any portion of net income that is not required for dividends may be set aside for a surplus fund.

The decision of the Trustee or Trustees as to what constitutes capital or income shall be final, and all profit arising from the exchange or transfer of investment may be considered to be increase of the corpus of the Trust Fund if the Trustee or Trustees so declare.

XIII.

Certificates of Interest.

The Trustee or Trustees shall issue a certificate to each person who shall make the required payment into the Trust Fund, which

is to be known as a share of the beneficial interest in said fund, and which investment shall become a part of the Trust Fund. The said certificate shall be substantially as follows:

ROBERTS POOL SYNDICATE.

1400 Shares Nominal Value \$25.00 Each.

A Trust Fund created by a Declaration and Indenture of Trust the-----day of-----19----, and recorded in the office of the Clerk of Superior Court of Wake County, State of North Carolina, on the-----day of-----, 19----

Certificate of Interest.

This is to certify that----- is the owner of-----fully paid shares of beneficial interest in Roberts Pool Syndicate, a Trust Fund created on the-----day of-----, 19----, by a Declaration and Indenture of Trust, recorded in the office of the Clerk of Superior Court of Wake County, State of North Carolina, on the-----day of-----19----, of the value Twenty-five (\$25.00) Dollars per share, transferable on the books of the Syndicate by the owner thereof in person or by duly authorized attorney, upon the surrender of the certificate properly endorsed.

This Certificate of Interest is subject to the provisions and covenants contained in the said Declaration and Indenture of Trust and any amendment thereto, present or future. No owner or holder of this certificate as such, shall have any authority, power or right whatsoever, to do or transact any business whatever for, on behalf of, or binding on the said Trust Fund, or on any other owner of a beneficial interest therein, and no owner of any certificate of beneficial interest shall be personally liable for any debt, covenants, demands, contracts of any kind, or torts of the Syndicate, beyond the payment in full of the amount for which this certificate of beneficial interest was issued.

Witness the signature of the properly authorized officers of the company the-----day of-----, 19----

President.

Treasurer.

XIV.

Transfer of Certificate.

The interest represented by the certificate may be transferred on the books of the Trustee or Trustees by the person named therein, or his legal representative, upon the surrender of the certificate and a new certificate shall be issued to the transferee, who shall thereupon become a cestui que trust. A form of assignment or transfer of certificate shall be adopted by the Trustee or Trustees and shall appear on the back of each certificate.

XV.

Lost Certificate.

In case of the loss or destruction of a certificate, the Trustee or Trustees may issue a duplicate thereof on such terms as they may deem proper.

XVI.

Death of a Shareholder.

The death of a shareholder or the resignation or death of a Trustee during the continuance of this trust shall not operate to determine the trust nor shall it entitle the legal representative of the deceased owner of the certificate of interest to an accounting, nor to take any action in the courts or elsewhere against the Trustee or Trustees; but the executors, administrators, or assigns of any deceased shareholder shall succeed to the rights of said decedent under this trust.

XVII.

Resignation of Trustee.

Any Trustee may resign his trust by a written instrument signed and sealed by him and acknowledged in the manner described for the acknowledgment of Deeds and recorded in the office of the Clerk of the Superior Court of Wake County, State of North Carolina.

In case of the resignation, death, or other inability to continue to act of a sole Trustee, a new Trustee or Trustees shall be elected by the shareholders at a meeting held at the principal office of the company in the State of North Carolina, upon ten days' notice in writing to the last known postoffice address of each shareholder.

Any vacancy occurring from any cause in the number of Trustees, shall be filled by the remaining Trustee or Trustees. The term "Trustee" or "Trustees" in this Indenture shall be deemed to mean those who are or may be Trustees for the time being.

XVIII.

Distribution of Trust Fund.

Upon the expiration of the time for which the said trust was created, the Trustee or Trustees, after paying all outstanding obligations, shall then distribute the fund remaining among the holders of the beneficial interests thereof according to their respective shares therein, and shall thereupon be forever discharged.

XIX.

Alteration or Termination of Trust.

The Trustee or Trustees may, with the consent of three-fourths of the interest of the cestuis que trustent, alter or add to this declaration, or terminate this trust, and if it seems to them desirable so to do, they may, with like consent, convey the Trust Fund to new or other Trustees or to a corporation, being first duly indemnified for any outstanding obligation or liability.

It is especially declared, however, that the Trustees shall be under no obligation to terminate this Trust or convey the Trust Fund except as hereinbefore provided.

In Witness Whereof, the said-----
have hereunto set their names and seals in token of their assent to and approval of the terms of this Declaration and Indenture of Trust for themselves, and their assigns on the day and year first above written, and the said -----
Trustees, have hereunto set their hands and seals in token of their acceptance of the trust hereinbefore mentioned for themselves and their successors, and do hereby declare that they will hold said Trust Fund together with all other property which they may acquire as such Trustees; together with the proceeds thereof in trust, to manage and dispose of the same for the benefit of the holders from time to time of the certificates of beneficial interest issued hereunder and they further declare that if additional Trustee or Trustees are named by them as herein provided, such Trust-

tee or Trustees will accept this trust in manner herein provided.

----- (Seal)
 ----- (Seal)
 ----- (Seal)
 ----- (Seal)
 ----- (Seal)
 ----- (Seal)

Witness
 as to all:

 Formal acknowledgments should follow here:

**ORGANIZATION OF COMMERCIAL BUILDING COMPANY,
 AND ITS PROCEEDINGS AMENDING CHARTER, ISSU-
 ING PREFERRED STOCK, AND ISSUING BONDS SE-
 CURING THEM BY MORTGAGE, AND OTHER
 MATTERS.**

First Meeting of Incorporators.

Directors' Room, Commercial National Bank,
 Raleigh, N. C., January 10th, 1912,
 Eleven (11) O'Clock, A. M.

This being the time and place named in the certificate of incorporation of COMMERCIAL BUILDING COMPANY for holding the first meeting of the incorporators for the purpose of perfecting the organization of the corporation, the following named incorporators were present in person:

A. L. Baker,
 Carey J. Hunter,
 Thomas H. Briggs,
 B. F. Montague, and
 J. M. Sherwood,

these being all of the incorporators named in the certificate of incorporation.

Mr. A. L. Baker acted as President and Mr. T. H. Briggs as Secretary.

The Secretary then read the waiver of notice of this meeting, duly signed by all of the incorporators, a copy of which was ordered to be spread in full upon the minutes and the original filed with the Secretary of the company.

The following is a copy of the

**WAIVER OF NOTICE OF FIRST MEETING OF
INCORPORATORS.**

We, the undersigned, being all of the incorporators and subscribers to the capital stock, and all parties named in the certificate of incorporation of **COMMERCIAL BUILDING COMPANY**, a corporation created under the laws of the State of North Carolina, do hereby waive notice of the time, place and purpose of the first meeting of the incorporators of said company and do hereby fix eleven (11) o'clock A.M., on Wednesday, January 10th, 1912, as the time, and the Directors' Room of Commercial National Bank, in the City of Raleigh, N. C., as the place for holding the first meeting of the incorporators and subscribers to the stock of said company, and hereby ratify the provisions contained in the certificate of incorporation of said company, prescribing the time and place for holding the first meeting of the incorporators of said company, for the purpose of perfecting the organization of said company, and for the transaction of such business as may come before said meeting.

And we do hereby waive all the requirements of the statutes of the State of North Carolina, as to the notice of this meeting and publication thereof; and we do consent to the transaction of such business as may come before the said meeting.

Witness our several hands, this the 10th day of January, 1912.

A. L. BAKER,
CAREY J. HUNTER,
THOMAS H. BRIGGS,
B. F. MONTAGUE,
J. M. SHERWOOD.

Witness:

C. A. GOSNEY.

The President then announced that all of the incorporators being present in person, the meeting was ready for the transaction of business.

The President then presented a certified copy of the certificate of incorporation of the company, which had been duly recorded in the office of the Clerk of the Superior Court of Wake County, N. C. On motion of Mr. C. J. Hunter, duly seconded by Mr. B. F. Montague, the same was unanimously adopted, and a copy ordered to be spread upon the minutes. The following is a copy of the

CERTIFICATE OF INCORPORATION
of
COMMERCIAL BUILDING COMPANY.

THIS IS TO CERTIFY, That we, the undersigned, do hereby associate ourselves into a corporation under and by virtue of the laws of the State of North Carolina, as contained in Chapter 21 of the Revisal of 1905, entitled "Corporations" and the several amendments thereto, and do severally agree to take the number of shares of capital stock in the said corporation set opposite our respective names, and to that end do hereby set forth:

1. The name of this corporation is COMMERCIAL BUILDING COMPANY; but the contraction "COMMERCIAL BLDG. CO." shall be considered to be a sufficient expression and signature of said name for all proper purposes.

2. The location of the principal office of the corporation in this state is at the banking house of Commercial National Bank, and in the Directors' Room of said bank, on East Martin street, in the City of Raleigh, County of Wake; but it may have one or more branch offices and places of business out of the State of North Carolina, as well as in said state.

3. The objects for which this corporation is formed are as follows:

(a) To own real estate and erect, equip, maintain and build buildings to be used for banking, commercial and mercantile purposes, offices, sales agencies and any and all other like purposes. And to rent said buildings, apartments, offices or portions thereof; and to do any and all other acts necessary or convenient to be done in connection with the ownership, equipment and maintenance of such building or buildings for the purposes aforesaid.

And in order to properly prosecute the objects and purposes above set forth, the corporation shall have full power and authority to purchase, lease and otherwise acquire, hold, mortgage, convey and otherwise dispose of all kinds of property, both real and personal, both in this state and in all other states, territories and dependencies of the United States; to purchase the business, goodwill and all other property of any individual, firm or corporation as a going concern, and to assume all its debts, contracts and obligations, provided said business is authorized by the powers contained herein; to construct, equip and maintain buildings, works, factories, and plants; to install, maintain and operate all

kinds of machinery and appliances; to operate same by hand, steam, water, electric or other motive power, and generally to perform all acts which may be deemed necessary or expedient for the proper and successful prosecution of the objects and purposes for which the corporation is created.

4. The total authorized capital stock of this corporation is Fifty Thousand (\$50,000.00) Dollars, divided into five hundred (500) shares of the par value of One Hundred (\$100.00) Dollars each; but the corporation may organize and begin business when Five Hundred (\$500.00) Dollars of capital stock, composed of five (5) shares shall have been subscribed for. And the corporation may issue this stock as one class, or it may issue more than one class of stock; and it may issue stock having a preferential lien both upon the earnings and the property of the corporation, and upon such terms and conditions as the corporation may designate. And the corporation may, from time to time, authorize the issue of such stock, whether common or preferred, or both; provided, however, the total issue of all kinds of stock shall not exceed the sum of Fifty Thousand (\$50,000.00) Dollars; and, provided, further, that such increase of the issue of capital stock shall be authorized by resolutions of the stockholders to that effect, stating the amount of such increase and the character of the stock to be issued.

5. The stockholders of the corporation shall not be individually liable for the debts of the corporation.

6. The names and postoffice addresses of the subscribers for stock, and the number of shares subscribed for by each, the aggregate of which being the amount of capital stock with which the company will commence business, are as follows:

<i>Name</i>	<i>Postoffice Address</i>	<i>No. of Shares</i>
A. L. Baker -----	Raleigh, N. C. -----	One
C. J. Hunter -----	Raleigh, N. C. -----	One
T. H. Briggs -----	Raleigh, N. C. -----	One
B. F. Montague -----	Raleigh, N. C. -----	One
J. M. Sherwood -----	Raleigh, N. C. -----	One

7. The period of existence of this corporation is limited to sixty (60) years.

8. The board of directors of this corporation shall have power by vote of a majority of all the directors, and without the assent or vote of the stockholders to make, alter, amend and rescind the by-laws of this corporation.

9. The first meeting of the corporation shall be held in the Directors' Room of the Commercial National Bank, on East Martin street, in the City of Raleigh, County of Wake, on the 10th day of January, 1912, at 11 o'clock A. M., and no other or further notice of said meeting shall be necessary. And service of this notice is hereby accepted by all of the incorporators whose names are signed hereto. That until such meeting A. L. Baker shall be President and T. H. Briggs Secretary and Treasurer of this corporation; and, without further authorization, they shall perform any and all acts necessary to be done for and in the name of this corporation.

IN TESTIMONY WHEREOF, We have hereunto set our hands and affixed our seals, this the 10th day of January, A.D. 1912.

(Signed) A. L. Baker, (Seal).

(Signed) Carey J. Hunter, (Seal).

(Signed) Thomas H. Briggs, (Seal).

(Signed) B. F. Montague, (Seal).

(Signed) J. M. Sherwood, (Seal).

Signed, sealed and delivered in the presence of

(Signed) B. H. Little, Witness.

**NORTH CAROLINA,
WAKE COUNTY.**

THIS IS TO CERTIFY, That on this 10th day of January A. D. 1912, before me, a Notary Public, personally appeared A. L. Baker, Carey J. Hunter, Thomas H. Briggs, B. F. Montague and J. M. Sherwood, _____, who I am satisfied are the persons named in and who executed the foregoing certificate of incorporation of COMMERCIAL BUILDING COMPANY, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this the 10th day of January, A.D. 1912.

(Signed) B. H. Little,

Notary Public, Wake County, N. C.

My Commission expires the 18th day
of December, 1913.

(N. P. Seal.)

Filed January 10th, 1912. J. Bryan Grimes, Secretary of State.

On motion of Mr. C. J. Hunter, duly seconded by Mr. B. F. Montague, it was ordered that the capital stock of this company for the present be placed at the sum of Five Thousand (\$5,000.00) Dollars, in shares of the par value of One Hundred (\$100.00) Dollars each; and that the same be offered to subscribers at par, and to be paid for by the subscribers as called for by the Directors, the corporation reserving a lien upon all subscriptions for partial payment of stock, with the right, in case of default, to sell the said stock and pay the subscriptions which should then be in arrears. The directors shall prescribe the form of the certificates of stock.

Subscriptions being called for, stock was subscribed for as follows:

Mr. A. L. Baker	-----	subscribed for	-----	10 shares
Mr. T. H. Briggs	-----	subscribed for	-----	10 shares
Mr. B. F. Montague	-----	subscribed for	-----	10 shares
Mr. Carey J. Hunter	-----	subscribed for	-----	10 shares
Mr. J. M. Sherwood	-----	subscribed for	-----	10 shares

An agreement to take and pay for said shares of stock, signed by said subscribers, was entered into as follows and it was ordered that said agreement of the subscribers be made and treated as a part of the minutes of this meeting:

Raleigh, N. C., January 10th, 1912.

For value received, we, whose names are signed hereto, severally, but not jointly, agree to take the amount of stock in COMMERCIAL BUILDING COMPANY set opposite our respective names; and to pay for said stock according to the calls to be made upon the stockholders by the directors. But it is expressly understood and agreed that we do not bind ourselves in any way as sureties for one another and our respective obligations shall be completely fulfilled by subscribing and paying for, at par, and in the manner aforesaid, the shares of stock set opposite our respective names.

Whereupon the said subscribers for stock were invited to take part in the meeting.

Upon motion of Mr. B. F. Montague, duly seconded by Mr. C. J. Hunter it was ordered that the seal of the corporation shall be a device circular in form, with the words "Commercial Building Co. Seal. Incorporated 1912"; and an impression made from said device appears upon this page.

Upon motion of Mr. J. M. Sherwood, duly seconded by Mr. Thos. H. Briggs, the following were adopted as the by-laws of this company:

BY-LAWS OF COMMERCIAL BUILDING COMPANY.

Article I.

Section 1. The annual meeting of the stockholders shall be held on Monday before the second Tuesday in January of each and every year, at the office of the Company in Raleigh, N. C., when there shall be elected, by a plurality vote, by ballot, five (5) directors to serve one year, and until their successors are elected and qualified.

Sec. 2. Special meetings of the stockholders may be called by order of the board of directors, and it shall be their duty to call such meeting upon the written request of one-third of the stock.

Sec. 3. At all meetings of stockholders, each stockholder shall be entitled to one vote for each share held by him, whether preferred or common, which vote may be given personally, or by proxy duly authorized in writing, which shall be filed with the Secretary.

Sec. 4. A quorum shall consist of stockholders representing in person, or by proxy, a majority of the outstanding shares of stock. If no quorum is present at any meeting, it may be adjourned from time to time until a quorum shall be present.

Sec. 5. Two days notice of a meeting shall be given to each stockholder personally, by mail to his last known address or by publication.

Article II.

Board of Directors.

Section 1. The affairs of the company shall be managed by a board of directors, to consist of five (5) members, who shall be stockholders, to be elected annually, to serve for one year and until their successors are elected and qualified.

Sec. 2. The board of directors shall have power to fill all vacancies in their body until the next annual meeting of the stockholders; and shall have power to make, amend or repeal any by-law.

Sec. 3. The directors shall have power to elect or appoint all necessary officers or committees; to employ agents, factors, clerks

and workmen; to fix their compensation; to prescribe their duties; to dismiss any appointive officer or agent without previous notice; and generally to control and manage the affairs of the company.

Article III.

Officers.

Section 1. The board of directors shall annually elect the following officers, who shall hold their respective offices for one year, and until their successors are elected and qualified: A president, a vice-president and a secretary and a treasurer.

Sec. 2. The board of directors shall fill all vacancies occurring among the officers.

Article IV.

Duties of Officers.

Section 1. The president shall preside at all meetings of the board of directors, shall see that all orders and resolutions of the board of directors are carried out; execute all conveyances, contracts and agreements, authorized by the board of directors; sign all certificates of stock; and generally see that all the officers and agents of the company perform their duties.

Sec. 2. The vice-president shall perform the duties of the president in his absence.

Sec. 3. The secretary shall be ex officio the secretary of the board of directors, and shall record all votes and keep the minutes of all proceedings in a book to be kept for that purpose. He shall be the custodian of the common seal, and shall attest the same when affixed by order of the board of directors. It shall also be the duty of the secretary to keep all the books, papers and records of the Company. And the minutes of this company shall be written in a solid bound book and kept permanent; and the pasting in said book of typewritten copies of resolutions or by-laws shall not be considered a compliance with this by-law.

Sec. 4. The treasurer shall perform all of the duties usually performed by a treasurer, and as such, he shall collect, receive and hold the money of the company; endorse and collect all checks and negotiable instruments and keep full and accurate accounts of the receipts and disbursements of the company, rendering a full account to each regular stockholders' meeting. And it shall be the especial and particular duty of the treasurer to do the following things:

(a) To make all reports required by the laws of this State or of the United States, whether said reports be required to be made to the corporation commission, the treasurer, the auditor, the secretary of state, collector of United States internal revenue, or any other officer.

(b) To keep posted the sign over the office door required by section 1242 of the revisal of 1905.

(c) To see to the listing and payment of all taxes, which may become due from this company to the United States, the state, county or city, including the franchise and corporation taxes payable direct to the state treasurer.

(d) See that the property of the company is covered by fire insurance, with sufficient indemnity insurance to protect the company against loss by accidents or negligence of contractors.

Sec. 5. The duties of the secretary and treasurer may be combined in one officer; and when so combined such officer shall perform all the duties hereinbefore prescribed for both the secretary and the treasurer.

Sec. 6. The board of directors may, in the absence of an officer, delegate his power and duties to any other officer or to a director for the time being.

Article V.

Capital Stock

Section 1. Each holder of the capital stock of the company shall be entitled to a certificate, signed by the president and treasurer, accounts of which shall be kept by the treasurer. No stock shall be transferable, except upon the books of the company, upon the surrender and cancellation of the outstanding certificates.

Sec. 2. The stock books shall be the only evidence as to who are the stockholders of the company.

Article VI.

Amendments.

Amendments to the by-laws can be made by the stockholders in regular meeting assembled, either annual or special, and if special, then the purpose of the meeting, with the proposed amendment must be stated in the call.

Article VII.**Miscellaneous.**

The Commercial National Bank of Raleigh, N. C., is hereby declared to be the depository of the funds of this company; and such funds shall be drawn out only upon check signed by the treasurer and countersigned by the president or vice-president of this company.

Article VIII.**Reserving Portion of Net Earnings for Additional Working Capital.**

The directors of this company, without further authority than herein contained, may, from time to time, fix the amount of the earnings of this company which shall be reserved as working capital. And they may change the said amount from time to time as the situation and condition of the company would seem to justify.

On motion of Mr. Sherwood, duly seconded by Mr. Hunter, it was ordered that the meeting proceed to the election of five (5) directors, to serve until the next annual meeting, and until their successors are elected and qualified, and that the ballots be taken and counted by the president and secretary, which was accordingly done. All of the stockholders having cast their ballots the statutory provision for keeping the polls open for an hour was waived and the polls closed. The ballots were then counted with the following result:

Mr. A. L. Baker	received	50 votes.
Mr. Thos. H. Briggs	received	50 votes.
Mr. B. F. Montague	received	50 votes.
Mr. Cary J. Hunter	received	50 votes.
Mr. J. M. Sherwood	received	50 votes.

Whereupon the following gentlemen were declared to have been elected directors to serve until the next annual meeting, and until their successors are elected and qualified: Messrs. A. L. Baker, Thos. H. Briggs, B. F. Montague, Cary J. Hunter and J. M. Sherwood.

On motion of Mr. Montague, duly seconded by Mr. Briggs, the following resolution was unanimously adopted:

Resolved, That this corporation do now begin active business to perform the objects set out in the certificate of incorporation, especially the business of acquiring real estate in the City of

Raleigh, and erecting thereon a building for banking, mercantile, offices and other purposes; and that the board of directors be, and they are hereby authorized, empowered and directed to take the necessary steps, looking to the accomplishment of these purposes.

On motion of Mr. Briggs, duly seconded by Mr. Sherwood, ordered that the secretary be directed to have prepared and printed or engraved certificates of stock for the use of the company.

Thomas H. Briggs, Secretary.

Directors' Room,
Commercial Nat'l. Bank,
Raleigh, N. C., June 11, 1913,
Four o'clock P.M.

Pursuant to the call for a special meeting of the board of directors, made by the president this day, the directors of Commercial Building Company met in the directors' room of the Commercial National Bank, Raleigh, N. C., on Wednesday, June 11th, at four o'clock P. M.

A roll call disclosed the fact that all of the directors of the corporation were present as follows:

A. L. Baker J. M. Sherwood, Carey J. Hunter, Thomas H. Briggs, and B. F. Montague.

The meeting was called to order by the president, and the secretary of the company acted as secretary of the meeting.

The call of the meeting was read, and ordered spread upon the minutes of the meeting. The following is a copy of the call of the meeting:

CALL FOR MEETING OF BOARD OF DIRECTORS OF COMMERCIAL BUILDING COMPANY, RALEIGH, N. C.,

JUNE 11, 1913.

To the directors of Commercial Building Company:

The board of directors of Commercial Building Company is hereby called to meet in the directors' room of Commercial National Bank, Raleigh, N. C., on June 11th, 1913, at four o'clock P.M.

The purpose of said meeting is to consider a proposition and resolution recommending to the stockholders of said company that an amendment to the charter or certificate of incorporation be asked for and obtained from the secretary of state, authoriz-

ing an increase in the amount of the authorized issue of capital stock of this company from the present authorized amount of Fifty Thousand (\$50,000.00) Dollars to One Hundred and Five Thousand (\$105,000.00) Dollars, being an increase of Fifty Five Thousand (\$55,000.00) Dollars in the present authorized capital stock of said company; and to apply to the secretary of state for an amendment to the charter or certificate of incorporation and authorizing and permitting such increase.

Other matters of importance to the company may be considered at said meeting, and a full attendance is earnestly requested.

(Signed) A. L. Baker, President,
Commercial Building Company.

A waiver of notice of the meeting, signed by all of the directors, was presented and read and ordered spread upon the minutes of the meeting. The following is a copy of the waiver of notice of the meeting:

**WAIVER OF NOTICE OF MEETING OF BOARD OF
DIRECTORS OF COMMERCIAL BUILDING COMPANY,**

Raleigh, N. C., June 11th, 1913.

We, and each of us, directors of Commercial Building Company, hereby accept service of notice of the meeting of the board of directors of Commercial Building Company, to be held on the 11th day of June, 1913, at four o'clock P.M. in the directors' room of Commercial National Bank, Raleigh, N. C.

We hereby waive any and all further notice of said meeting and agree to be present. And we consent that a proposition recommending to the stockholders of said company that an amendment to the charter or certificate of incorporation of the company be asked for and obtained from the secretary of state, authorizing an increase in the amount of the authorized issue of the capital stock of this company from the present authorized amount of Fifty Thousand (\$50,000.00) Dollars to One Hundred and Five Thousand (\$105,000.00) Dollars, being an increase of Fifty-Five Thousand (\$55,000.00) Dollars in the present authorized capital stock of said company may be considered and passed upon.

And we further consent that any other matters of importance to said company may be considered at said meeting.

Witness our hands and seals this the 11th day of June, 1913.

(Signed) A. L. Baker, (Seal),
(Signed) Carey J. Hunter, (Seal),
(Signed) Thomas. H. Briggs, (Seal),
(Signed) J. M. Sherwood, (Seal),
(Signed) B. F. Montague, (Seal).

WITNESS:

C. A. Gosney.

The reading of the minutes of the last meeting was, on motion duly seconded, dispensed with.

Whereupon Mr. Carey J. Hunter offered the following resolution to wit:

RESOLUTION OF DIRECTORS OF COMMERCIAL BUILDING COMPANY.

Resolved by the directors of Commercial Building Company in meeting regularly called and assembled:

1. That it is desirable that this company apply for and procure from the secretary of state an amendment to the charter or certificate of incorporation, whereby this company will be permitted and authorized to increase the amount of its capital stock from the maximum of Fifty Thousand (\$50,000.00) Dollars now permitted to the maximum of One Hundred and Five Thousand (\$105,000.00) Dollars, being an increase of Fifty Five Thousand (\$55,000.00) Dollars in said capital stock, of which One Thousand (1,000) shares of the par value of One Hundred (\$100.00) Dollars each may be preferred and cumulative stock, entitled to a preferential dividend of six per cent per annum, and conditioned as the company may direct. That in the opinion of the board of directors of this company the purposes and needs of the company require, and will be subserved by a change in its charter or certificate of incorporation and by the issue and sale of said stock as aforesaid.

2. That a meeting of the stockholders of this company is hereby called to be held in the directors' room of Commercial National Bank, Raleigh, N. C., on the 11th day of June, 1913, at four thirty o'clock P. M., to consider and pass upon a recommendation and resolution adopted this day by the board of directors, recom-

mending that the company procure from the secretary of state an amendment to its charter or certificate of incorporation, authorizing an increase of the capital stock of this company from Fifty Thousand (\$50,000.00) Dollars to One Hundred and Five Thousand (\$105,000.00) Dollars; and to consider any other matters of interest to the company, which may be brought to the attention of the meeting. And each stockholder is earnestly requested to be present at said meeting.

The said resolution was seconded by Mr. Thomas H. Briggs. A vote being taken, five directors, being the entire board, voted in favor of the said resolution. Whereupon the president declared the same duly adopted.

Whereupon on motion of Mr. Thomas H. Briggs, duly seconded by Mr. Carey J. Hunter, the meeting took a recess until Saturday, June 14th, 1913, at four o'clock P. M., to meet at that date and hour in the directors' room of Commercial National Bank, Raleigh, N. C.

A. L. Baker, President.

J. M. Sherwood, Secretary.

MINUTES OF MEETING OF STOCKHOLDERS OF COMMERCIAL BUILDING COMPANY,

Directors' Room, Commercial National Bank,

Raleigh, N. C., June 11, 1913, 4:30 P. M.

Pursuant to a resolution of the board of directors of Commercial Building Company adopted the eleventh day of June, 1913, and pursuant to a call of the president issued under and by virtue of said resolution, a meeting of stockholders of Commercial Building Company was held in the Directors' Room of Commercial National Bank, Raleigh, N. C., on Wednesday, June 11, 1913, at four-thirty o'clock P.M.

The president, Mr. A. L. Baker, called the meeting to order and the secretary, Mr. J. M. Sherwood, acted as secretary of the meeting.

The call of the meeting was read and ordered spread upon the minutes of the meeting. The following is a copy of the call of the meeting:

(Here follows Call)

A waiver of notice of the meeting signed by all of the stockholders, was presented and read and ordered spread upon the

minutes of the meeting. The following is a copy of the waiver of notice of the meeting:

(Here follows Waiver)

On motion, duly seconded, the reading of the minutes of the last meeting was dispensed with.

The secretary called the roll of stockholders, and each and every stockholder of the company answered present. Whereupon the president declared the meeting ready for business.

The president then stated the object of the meeting and presented a resolution adopted at a meeting of the board of directors this day held recommending that an amendment to the charter or certificate of incorporation of the company be procured, which would authorize and empower the company to increase its capital stock from the sum of Fifty Thousand (\$50,000.00) Dollars to the sum of One Hundred and Five Thousand (\$105,000.00) Dollars, One Hundred Thousand (\$100,000.00) Dollars of which stock may be preferred and cumulative stock and entitled to a preferential dividend of six per cent per annum, the terms and conditions of said stock to be determined upon by the company.

The proposition was discussed, and after discussion, Mr. Thomas H. Briggs offered the following resolution, to-wit:

RESOLUTION OF STOCKHOLDERS OF COMMERCIAL BUILDING COMPANY.

Resolved by the stockholders of Commercial Building Company in meeting duly called and assembled, at which each stockholder was present in person:

1. That in the opinion of the stockholders of this company it is advisable that the authorized capital stock of this company be increased from the present maximum of Fifty Thousand (\$50,000.00) Dollars to One Hundred and Five Thousand (\$105,000.00) Dollars.

2. That the charter or certificate of incorporation of this corporation be amended so as to authorize the issue of capital stock to the amount of One Hundred and Five Thousand (\$105,000.00) Dollars, par value in shares of One Hundred (\$100.00) Dollars each, the total number of shares being One Thousand Fifty (1050) of which One Thousand (1000) shares of the par value of One Hundred (\$100.00) Dollars each may be preferred and cumulative stock, entitled to a preferential dividend of six per

cent per annum, and conditioned as the company may direct; and that the secretary of state be, and he is hereby, requested to grant such amendment as will authorize said increase in said capital stock.

3. That when this meeting adjourns it shall be adjourned to reconvene on Saturday, the 14th day of June, 1913, at four thirty o'clock P.M., in the directors' room of Commercial National Bank, Raleigh, N. C., to consider and accept the amendment to the charter or certificate of incorporation, if the same shall be granted by the secretary of state, as requested by this resolution.

The said resolution was seconded by Mr. Carey J. Hunter. A vote being taken, the said resolution was unanimously adopted, every stockholder of the company voting in favor of the same.

On motion of Mr. Carey J. Hunter, duly seconded by Mr. Thos. H. Briggs, it was ordered that the president proceed at once to secure the amendment to the charter, and to do any and all acts and things necessary to obtain the same, and, if granted, have the same recorded in the office of the clerk of the superior court of Wake County, and present the same to an adjourned meeting of the stockholders of this company to be held on Saturday, June 14th, 1913, at four thirty o'clock P.M.

On motion of Mr. Thomas H. Briggs, duly seconded by Mr. Carey J. Hunter, the meeting took a recess until Saturday, June 14th, 1913, at four thirty o'clock P.M., to meet at that date and hour in the directors' room of Commercial National Bank, Raleigh, N. C.

J. M. Sherwood, Secretary.

A. L. Baker, President.

MINUTES OF MEETING OF BOARD OF DIRECTORS OF COMMERCIAL BUILDING COMPANY,

Directors' Room, Commercial National Bank,

Raleigh, N. C., June 14, 1913, Four o'clock P. M.

This being the time and place for holding the adjourned meeting of the board of directors of Commercial Building Company (according to adjournment had of the meeting called and held at this place on the 11th of June, 1913, duly called by the President), and in pursuance of a call of the president, the meeting was called to order by Mr. A. L. Baker, president of the company.

Mr. J. M. Sherwood, secretary of the company, acted as secretary of the meeting.

A roll call disclosed the presence of the following directors: Messrs. A. L. Baker, J. M. Sherwood, Thomas H. Briggs, B. F. Montague and Carey J. Hunter, they being all of the directors of the company.

The president presented a call for the meeting, which was read, and ordered spread upon the minutes of the meeting. The following is a copy of the call:

**CALL FOR MEETING OF DIRECTORS OF COMMERCIAL
BUILDING COMPANY.**

Raleigh, N. C., June 11th, 1913.

To the Directors of Commercial Building Company:

You, and each of you, are hereby notified that the directors of Commercial Building Company are hereby called to meet on the 14th day of June, 1913, at four o'clock P. M., in the directors' room of Commercial National Bank, Raleigh, N. C.

The purpose of said meeting is to consider a proposition to purchase the parcel of land in the City of Raleigh, N. C., at the southwest corner of East Martin and South Wilmington streets, Raleigh, N. C., composing the lots formerly owned by Commercial & Farmers Bank and the Wyatt Estate, and fronting on East Martin Street about 92 feet, and fronting on South Wilmington Street about 82 feet, adjoining on the south the Adams lot, and on the west the lot of Mrs. E. Burke Haywood, now occupied by Peebles & Edwards Shoe store.

If the purchase of said lot shall be approved, then the said meeting will consider a proposition to issue One Hundred Thousand (\$100,000.00) Dollars of preferred, cumulative, non-voting, six per cent stock to be used in paying for said lot; and will further consider a proposition to issue bonds to an amount aggregating Two Hundred Thousand (\$200,000.00) Dollars, in such denominations as shall be decided upon, bearing five per cent interest, payable semiannually on the first days of January and July of each year; the said bonds to be dated the first day of July, 1913, and the interest to begin to accrue on same on said date; the said bonds to be secured by a deed of trust executed to Virginia Trust Company of Richmond, Va., trustee.

The further purpose of said meeting is to hear reports from the officers of the company; and at said meeting officers for the current year will be elected.

And any and all other matters of interest to the company will be considered at said meeting.

You are earnestly requested to be present.

Respectfully,

A. L. Baker, President,
Commercial Building Company.

The president then presented a waiver of notice of the meeting, duly signed by all of the directors, which was read and ordered spread upon the minutes of the meeting. The following is a copy of the waiver of notice:

(Here follows Waiver)

The secretary then read the minutes of the meeting held on the 11th day of June, 1913, including the notice of the same, and read the resolution adopted at said meeting, adjourning the same to this place and hour, all of which, appearing to be regular, were approved and ordered filed with the records of the company.

The president stated the purposes of the meeting and described the situation of the company and narrated the proposition of the Commercial National Bank to sell its lot to this company, and take pay in One Hundred Thousand (\$100,000.00) Dollars of the preferred capital stock of this company, and to permit this company to place a mortgage on its property to secure bonds thereby to the amount of Two Hundred Thousand (\$200,000.00) Dollars, with which to complete the building now being erected on the lot of land at the southwest corner of East Martin and South Wilmington Streets in the City of Raleigh, and to pay the obligations of this company incurred in the erection, completion and equipment of said building; and he advised that the proposition be accepted, stock issued and the bonds and execution of the mortgage authorized.

The proposition was considered and discussed and after discussion Mr. B. F. Montague offered the following resolution:

RESOLUTION OF BOARD OF DIRECTORS OF COMMERCIAL BUILDING COMPANY.

WHEREAS, at the annual meeting of the stockholders of Commercial National Bank of Raleigh, N. C., held respectively on the 9th day of January, 1913, and the 11th day of January, 1913, certain resolutions were adopted authorizing a sale of the lot of land in the city of Raleigh, N. C., at the southwest corner of East Mar-

tin and South Wilmington Streets, bounded on the south by the Adams lot and on the west by the Haywood lot, now occupied by Peebles & Edwards Shoe Store, to Commercial Building Company for the sum of One Hundred Thousand (\$100,000.00) Dollars, payable in cash, stocks or bonds of said Commercial Building Company, or partly in cash, partly in stocks and partly in bonds, or in all of either, or any part thereof as might be agreed upon; and

WHEREAS in the opinion of the board of directors of the Commercial Building Company, it is advisable that this company purchase said lot on the terms aforesaid; and

WHEREAS this company has obtained an amendment to its charter or certificate of incorporation, whereby it is authorized to increase its capital stock to the amount of One Thousand and Fifty (1050) shares each of the par value of One Hundred (\$100.00) Dollars, with the right to issue of said One Thousand and Fifty (1050) shares, One Thousand (1000) shares of cumulative and preferred stock, entitled to a preferential dividend of six per cent per annum and conditioned as the company may direct.

NOW THEREFORE BE IT RESOLVED by the directors of Commercial Building Company in meeting duly called and assembled, every director being present in person:

1. That the Board of Directors recommends to the stockholders of this company that the capital stock of this company be increased by the issue and sale of One Thousand (1000) shares of the par value of One Hundred (\$100.00) Dollars, of cumulative preferred six per cent and non-voting stock, with the right reserved to this company to redeem the same by paying One Hundred (\$100.00) Dollars for each share together with a bonus or premium of One (\$1.00) Dollar on each share for each full year, not exceeding ten (10) after January 1st, 1914, and accrued and unpaid dividends, and interest thereon, on any first day of January after 1914; provided thirty (30) days' notice of the purpose to redeem shall have been given to the owner or owners of said stock as disclosed by the records of this company. And that the said 1000 shares of preferred stock, which the Board of Directors recommends shall be issued and sold, shall be used in paying for the lot to be purchased from the Commercial National Bank of Raleigh, N. C. That said stock, when issued, may be delivered di-

rectly to said Commercial National Bank of Raleigh, N. C., or to whomsoever said bank may direct the delivery of the whole or any part thereof; and such delivery of said stock may be made by the officers of this company upon delivery to them of a good and sufficient deed of conveyance, vesting in the company the fee simple title to said lot of land.

2. That the Board of Directors recommends that bonds of this company be issued to the amount of \$200,000.00 in denominations of \$100.00, dated July 1st, 1913, and maturing July 1st, 1923, bearing interest at the rate of five per cent per annum, payable semi-annually on the first day of January and July in each year, and secured by a deed of trust on the property to be purchased as aforesaid, to be executed by Commercial Building Company to Virginia Trust Company of Richmond, Va., Trustee, conveying to said Trustee the title to said parcel of land in the City of Raleigh before described, together with the buildings now being erected thereon as security for the payment of said bonds, and interest thereon. That said bonds when so issued shall be sold at not less than par; the proceeds to be used in discharging the indebtedness of this company heretofore incurred, and any and all liabilities, which it may have incurred, or may hereafter incur, for and on account of the erection, completion and equipment of the banking house and office building now being erected upon the lot of land aforesaid.

3. That the Board of Directors respectfully submits the foregoing propositions to the stockholders of this company for their consideration and recommends that all of the propositions hereinbefore submitted be adopted and put into effect by the said stockholders; and that the officers of the company be given full authority to do all acts, execute all papers and do all and any other things necessary to put all of the recommendations hereinbefore made into full force and effect when the same shall have been approved and adopted by the stockholders.

The resolution was seconded by Mr. Carey J. Hunter. A vote being taken, every director of the company voted in favor of the same, and the president declared the resolution adopted.

The president was then instructed to report the substance of said resolution to the meeting of the stockholders to be held at this place at four thirty o'clock this afternoon; and to recommend to the stockholders that they adopt all of said propositions; that they authorize the purchase of said lot of land on the terms here-

inbefore set out, the issue of the preferred stock and the issue of bonds to be secured by a mortgage or deed of trust as aforesaid.

The president stated that the next business before the meeting was the election of officers to serve during the current year and until their successors are elected and qualified. On motion of Mr. Cary J. Hunter, duly seconded by Mr. Thomas H. Briggs, the meeting proceeded to the election of officers for the current year.

Nominations for president being in order, Mr. Cary J. Hunter nominated Mr. A. L. Baker, which was duly seconded by Mr. Montague. There being no other nominations the same were closed. A vote being taken Mr. Baker received four (4) votes, and he was declared duly elected to serve during the current year and until his successor is elected and qualified.

Nominations for vice-president being in order, Mr. J. M. Sherwood nominated Mr. Thomas H. Briggs, which was duly seconded by Mr. C. J. Hunter. There being no other nominations the same were closed. A vote being taken Mr. Briggs received four votes; and he was declared duly elected vice-president to serve during the current year and until his successor is elected and qualified.

Nominations for secretary and treasurer being in order, Mr. Thos. H. Briggs nominated Mr. J. M. Sherwood, which was duly seconded by Mr. B. F. Montague. There being no other nominations the same were closed. A vote being taken Mr. Sherwood received four votes, and he was declared duly elected secretary and treasurer to serve during the current year and until his successor is elected and qualified.

On motion of Mr. Thomas H. Briggs duly seconded by Mr. Montague, a recess was taken until five o'clock P. M., when the Board of Directors will reassemble at this place to further consider the business of the company.

J. M. Sherwood, Secretary.

MINUTES OF MEETING OF STOCKHOLDERS OF COMMERCIAL BLDG. CO.

Directors' Room, Commercial National Bank, Raleigh, N. C.

Four Thirty O'clock P. M., June 14, 1913.

This being the time and place for holding the adjourned meeting of the stockholders of Commercial Building Company, according to adjournment had of the meeting called and held at this

place on the 11th day of June, 1913, duly called by order of the Board of Directors, the meeting was called to order by Mr. A. L. Baker, the president of the company. Mr. J. M. Sherwood acted as secretary.

The president presented a waiver of notice of the meeting, signed by all of the stockholders, which was read and ordered spread upon the minutes of the meeting. The following is a copy of the waiver of notice:

(Here follows Waiver)

The secretary then read the minutes of the meeting held on the 11th day of June, 1913, including the notice of the same, and read the resolution adopted at said meeting, adjourning the same to this place and hour, all of which, appearing to be regular, were approved and ordered filed with the records of the company.

Upon a call of the roll by the secretary it was ascertained that each and every stockholder was present in person; and that every share of stock of the company, fifty in number, was represented by its owner.

The president stated that the purpose of the meeting was to consider recommendations made by the Board of Directors which were substantially as follows: To consider and accept or reject the amendment to the charter or certificate of incorporation, of the company asked for at the former meeting held on the 11th of June, 1913, and granted by the Secretary of State. The president presented the certificate of change, which was read and considered.

Whereupon Mr. Thomas H. Briggs moved that the said amendment to the charter or certificate of incorporation be accepted on the part of this company; and that notice of this acceptance be given by the president to the Secretary of State. Mr. C. J. Hunter seconded the motion, and a stock vote being taken, fifty votes were cast in favor of said motion and none against it. Whereupon the president declared the motion duly carried and stated that the authorized capital stock of the company would henceforth be \$105,000.00.

The president stated that the next business which required the attention of the stockholders was the proposition of the Commercial National Bank of Raleigh to sell to this company its lot of land at the southwest corner of East Martin and South Wilmington streets at the price of \$100,000.00 payable in pre-

ferred stock of this company, to be issued under and by authority of the amendment to the charter before alluded to, which stock should be entitled to an annual fixed dividend of six per cent per annum payable semi-annually out of the net earnings of the company, and subject to redemption on the first day of January of any year after January 1st, 1914, at par, together with unpaid dividends, and interest, if any, plus a bonus of \$1.00 for each share of stock for each and every year said share of stock might have been outstanding (not exceeding ten) since January 1st, 1914, until the date of redemption; and that said stock should not have voting power; and the said stock to be issued with the understanding that this corporation should have the right to issue bonds which would be a first lien upon its property and have priority over said preferred stock to the amount of \$200,000.

The president stated that the directors recommended that said proposition from said Commercial National Bank be accepted. Whereupon Mr. C. J. Hunter moved that the offer of the Commercial National Bank to sell its property on the terms outlined in the statement of the president be accepted. The motion was seconded by Mr. B. F. Montague, a stock vote being taken, fifty votes were cast in favor of the motion and none against it.

Whereupon the president declared that the proposition of the bank had been accepted, and that it would be necessary and in order for the stockholders to authorize an increase of the capital stock by the issue of 1,000 shares, each of the par value of \$100 of preferred stock of the character mentioned in the foregoing statement. Whereupon Mr. Montague offered the following resolution:

RESOLVED, By the stockholders of Commercial Building Company in meeting duly called and assembled:

1. That the capital stock of this company be increased by the issue of 1,000 shares each of the par value of \$100.00, of cumulative, preferred, six per cent and non-voting stock. That said stock shall be a lien on the property of this company, subject only to \$200,000.00 of bonds to be issued. That said 1000 shares of preferred stock shall be dated July 1st, 1913, and that dividends shall begin to accrue thereon at the rate of six per cent per annum, payable semi-annually on the first days of January and July of each year out of the net earnings of the company. And that if in any year the earnings shall not be sufficient to pay such divi-

dends, the unpaid dividends shall be and remain a liability of the company, and shall bear interest at the rate of six per cent per annum from the date it should have been paid; and shall be payable together with such interest, whenever the income and profits of the company shall be sufficient to pay the same.

2. That this company shall reserve the right to call in and redeem all or any part of said preferred stock on the first day of January in any year after January 1st, 1914; and in the event the company desires to redeem any of said stock it shall give to the owner of record of the same notice by letter properly stamped and addressed and placed in the postoffice at Raleigh, N. C., not less than 30 days before the date named for redemption; and on said redemption date shall pay to the holder of the stock so to be redeemed the par value of the stock to be redeemed, together with any dividends thereon unpaid and interest on the same, if any, together with a bonus of \$1.00 per share per annum for each year the said stock shall have been outstanding (not exceeding ten) after January 1st, 1914, and prior to the date of redemption.

3. That the preferred stock so to be issued shall be in substantially the following form, that is to say:

Incorporated under the Laws of North Carolina, 1912.

Charter amended 1913 authorizing Increase of Capital Stock.

No. -----		Shares-----
Fully Paid	Non-Taxable	Non-Assessable.

COMMERCIAL BUILDING COMPANY

Raleigh, N. C.

Total Authorized Capital Stock -----	\$105,000.00
Total Authorized	Total Authorized
Preferred Stock—\$100,000	Common Stock—\$5,000
Shares—\$100 Each	

This is to certify that -----
is the owner of ----- shares of the par value of \$100 each of the preferred capital stock of Commercial Building Company, Raleigh, N. C., (hereinafter called the "Company") fully paid-up, non-taxable, non-assessable, transferable only on the books of the Company by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed. The record holder or holders of the preferred stock represented by this cer-

tificate shall be entitled to receive, and this company shall be bound to pay, a fixed annual dividend of six (6%) per cent cumulative, to accrue from the first day of July, 1913, payable in equal installments, on the first day of January and the first day of July in each year, out of the net earnings of the Company, and to be paid in dividends in that year before any dividends can, or shall be paid upon the common stock. If, in any year, all of the said dividends upon the preferred stock shall not be fully paid, then the amount thereof unpaid shall be and remain a charge with six (6%) per cent interest from the date it should have been paid, upon the net earnings of future years, to be paid before any dividends can, or shall, be declared and paid upon the common stock; and in the final dissolution of the company, or in the final distribution of its assets, the said preferred stock shall be paid at par, together with all arrearages of unpaid dividends and interest which may then remain before any distribution shall be paid to the holders of the common stock. All of the net earnings of the company, to be declared as dividends in any year, after all dividends shall have been paid as aforesaid upon the preferred stock, together with all arrearages on same, shall belong entirely to the holders of the common stock. And in the final dissolution of the company, or in the final distribution of its assets, after payment of all its debts, the holders of the preferred stock shall be entitled to receive the par value of their shares, together with all unpaid dividends and arrearages. The balance shall be distributed ratably among the holders of the common stock. Each share of the common stock, but not the preferred, shall be entitled to one vote in all stockholders' meetings.

Commercial Building Company, Raleigh, N. C., hereby reserves the right to be exercised, in the manner hereinafter provided, whenever its Board of Directors shall think advisable so to do, to call in this certificate of stock, or any share of stock represented by it, for redemption and cancellation. The company shall have the right to redeem and cancel the same on the first day of January in any year after the year 1914, by giving to the holder hereof, as disclosed by the stock book not less than thirty (30) days notice of such intention, prior to the date of redemption; and by paying on such date of redemption to the record holder thereof One Hundred (\$100) Dollars each for the share or shares redeemed, together with all unpaid arrearages of dividends and interest thereon, according to the tenor of this

certificate, and by paying in addition thereto One (\$1.00) Dollar for each share for each and every full year, not exceeding ten (10), from and after January 1st, 1914, until the date of redemption. And a letter containing a notice of redemption, properly stamped and mailed, thirty (30) days prior to the date of redemption, in the postoffice at Raleigh, N. C., addressed to the owner of record of this certificate, shall be deemed sufficient notice of the company's purpose to redeem said stock. Dividends on such shares of stock as shall have been so called for redemption shall not accrue after the redemption date given in said notice.

WITNESS the seal of said company and the signature of its president and secretary this_____day of_____A. D. 191_____.

_____Secretary. _____President.

That said certificate of stock shall have on the back, for the convenience of transfer, a blank for assignment, as follows:

For value received_____hereby sell, assign and transfer unto_____shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint_____attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

Dated_____191_____.

In the presence of:

Notice. The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or any change whatever.

4. That when said stock shall have been signed in the name of the company by its president, and when the corporate seal shall have been affixed and attested by its secretary and the stock delivered to any purchaser thereof, the said stock shall be a valid and unimpeachable obligation of this company; and every condition, term, promise and stipulation contained in said certificate of stock shall be considered direct obligations of this company. And the purchaser or purchasers of said stock shall not be required or expected to see to the application of the funds arising from the sale thereof.

The said resolution was seconded by Mr. C. J. Hunter and a stock vote being taken, fifty votes were cast in favor of said resolution and none against it. The entire issue of stock and all the stockholders having voted in favor of said resolution, the president declared the same unanimously adopted. Every stockholder of the company waived his right to subscribe to the new issue of stock; and said waiver was ordered filed.

The president then stated that in order to pay for obligations incurred in erecting the building now in course of construction on the lot which the company had agreed to purchase from Commercial National Bank of Raleigh, it would be necessary in his opinion and in the opinion of the Board of Directors, for the company to issue bonds to the amount of Two Hundred Thousand (\$200,000.00) Dollars and sell the same in order to realize money with which to pay off the obligations of the company and to complete and equip the said building. The president stated that he thought the bonds could be sold at par, they being secured by a first lien on the property of the company. That said bonds should bear five per cent interest, payable semi-annually on the first days of January and July of each year; and that the principal should mature ten years after the issue of the same; and that said bonds should be dated and issued July 1, 1913.

The president further stated that in his opinion the income reasonably to be expected from the building would more than take care of the interest on the bonds and the dividends on the stock; and that said company will be able soon after the said building is completed to begin to pay off and redeem some of its bonds and preferred stock as the interest of the company may seem to require and make advisable. The said proposition to issue bonds was considered and after discussion, Mr. Cary J. Hunter offered the following resolution:

RESOLVED, By the stockholders of Commercial Building Company in meeting duly called and assembled:

That the proper officers of this company are hereby authorized and instructed to execute a mortgage or deed of trust, in the name of the company, upon all of the property of the company, to Virginia Trust Company of Richmond, Va., Trustee, in a form to be approved by the directors and counsel selected by them, for the purpose of securing Two Hundred (200) bonds of a series to be known as Commercial Building Company Five Per Cent First Mortgage Bonds, of even date and priority, without re-

gard to the time of their respective sale and delivery or to the individual issue to the respective holders thereof, to be dated July 1st, 1913, and be payable on the first day of July, 1923, which said bonds shall be numbered from one to two hundred, both numbers inclusive, and shall be in denomination of One Thousand (\$1,000) Dollars each, bearing interest at the rate of five per cent per annum, payable semi-annually on the first days of January and July of each year, until the whole principal and interest shall have been fully paid and discharged; the funds to be derived from the issue and sale of said bonds to be used in the prosecution of the company's business.

RESOLVED, further, That the Board of Directors place the said bonds on the market as soon as practicable, selling them for not less than par.

Mr. Thomas H. Briggs seconded said resolution, and a stock vote being taken, it was ascertained that each and every stockholder voted in favor of said resolution, fifty shares being cast in favor of the adoption of said resolution and none against it. It appearing that the entire issue of stock was voted in person by its owners in favor of said resolution, the president declared the same duly adopted.

The president then stated that the next business before the meeting was the election of five (5) directors to serve during the current year, and until their successors are elected and qualified. On motion of Mr. Thomas H. Briggs duly seconded by Mr. B. F. Montague, the meeting proceeded to the election of directors for the current year. Nominations being in order the following were nominated for directors: Messrs. A. L. Baker, J. M. Sherwood, B. F. Montague, Thomas H. Briggs and Carey J. Hunter. There being no other nominations the same were closed.

The polls having been opened according to law and the entire vote of the stockholders polled, the secretary announced the following results:

Mr. A. L. Baker received fifty (50) votes.

Mr. J. M. Sherwood received fifty (50) votes.

Mr. B. F. Montague received fifty (50) votes.

Mr. Thomas H. Briggs received fifty (50) votes.

Mr. Carey J. Hunter received fifty (50) votes.

Each of the foregoing gentlemen having received fifty (50) votes, the entire issue of stock, the president declared Messrs.
-----duly elected directors

to serve during the current year and until their successors are elected and qualified.

On motion of Mr. T. H. Briggs, duly seconded by Mr. B. F. Montague, the meeting of the stockholders adjourned to meet again in the directors' room of Commercial National Bank, Raleigh, N. C., on the 14th day of June, 1913, at five-thirty o'clock P.M.

J. M. Sherwood, Secretary.

**WAIVER OF RIGHT OF STOCKHOLDERS OF COMMERCIAL
BUILDING COMPANY TO SUBSCRIBE TO NEW ISSUE
OF STOCK.**

Raleigh, N. C., June 14th, 1913.

We, A. L. Baker, B. F. Montague, J. M. Sherwood, Thomas H. Briggs and Carey J. Hunter, the owners of ten (10) shares each of the stock of Commercial Building Company, and being all of the stockholders of said company, do hereby waive our rights to subscribe to any portion of the new issue of stock to be made by Commercial Building Company under and by authority of resolutions of the Board of Directors and the stockholders of said company.

And we hereby agree that said new issue of stock may be sold to such person, firm or corporation as may desire to purchase the same.

Witness our hands and seals this 14th day of June, 1913.

A. L. Baker, (Seal)
Carey J. Hunter, (Seal)
J. M. Sherwood, (Seal)
Thomas H. Briggs, (Seal)
B. F. Montague, (Seal)

WITNESS:

C. A. Gosney.

**MINUTES OF MEETING OF BOARD OF DIRECTORS OF
COMMERCIAL BUILDING CO.**

Directors' Room, Commercial National Bank of Raleigh, N. C.

June 14, 1913, Five O'clock P.M.

Pursuant to adjournment of a meeting called and held at this place this day at four o'clock P.M., and in pursuance of a call of the president, a meeting of the Board of Directors of Commercial Building Company, was held at the above stated time and place.

Mr. A. L. Baker, the president, resumed the chair, and Mr. J. M. Sherwood, acted as secretary. All of the members of the Board of Directors, to-wit ----- were present.

The president presented a call for the meeting, which was read and ordered spread upon the minutes. The following is a copy of the call:

(Here Insert Call)

The president then presented a waiver of notice, signed by all of the directors, which was read and ordered spread upon the minutes. The following is a copy of the waiver of notice:

(Here Insert Waiver)

The president stated that the purpose of the meeting was to carry into effect the resolutions adopted by the stockholders of this company at a meeting held this afternoon, directing the issue of 200 bonds, each of the denomination of \$1,000 dated July 1st, 1913, maturing July 1st, 1923, with interest at the rate of five per cent per annum, payable semi-annually on the first days of January and July in each year, to be secured by a conveyance of all of the property of the company by deed of trust to Virginia Trust Company of Richmond, Va., Trustee; the moneys to be received from the sale of said bonds to be used in liquidating the indebtedness of this company, and to complete and equip its building. After reading the resolutions of the stockholders, and after consideration and discussion, Mr. C. J. Hunter offered the following resolution:

WHEREAS, The stockholders of Commercial Building Company at their meeting held on June 14th, 1913, authorized and instructed the directors to cause to be prepared and executed a mortgage or deed of trust upon all of the property of the company, for the purpose of securing certain bonds therein described, for the purpose of obtaining funds for the prosecution of the company's business;

NOW, THEREFORE, BE IT RESOLVED by the directors of Commercial Building Company that the president and secretary of Commercial Building Company are hereby authorized and directed, in its behalf, and under its corporate seal, in the form this day approved by the board of directors and counsel, and which is hereby directed to be spread upon the minutes, to execute and deliver a deed of trust to Virginia Trust Company of

Richmond, Va., as trustee, to secure a series of two hundred bonds, known as Commercial Building Company Five Per Cent First Mortgage Bonds of even date and priority, without regard to the time of their respective sale and delivery, or the individual issue to the respective holders thereof, payable on the first day of July, 1923, numbered from one to two hundred, both numbers inclusive, for One Thousand (\$1,000.00) Dollars each, and bearing interest at the rate of five per cent per annum, payable semi-annually on the first days of January and July in each year, until the whole principal and interest is paid; which said bonds are to be issued and sold, and from time to time signed in the name of this company by the then president, and have the corporate seal of the company thereto affixed and attested by the then secretary and treasurer (the signature of the treasurer upon the coupons attached thereto only being engraved or printed in facsimile upon the coupons) and all of like form and tenor, except as to the serial numbers thereon, which said bonds and coupons shall be in words and figures following:

“STATE OF NORTH CAROLINA,
COUNTY OF WAKE,
CITY OF RALEIGH,

No. -----

\$1,000.00

COMMERCIAL BUILDING COMPANY

Five Per Cent First Mortgage Bonds

COMMERCIAL BUILDING COMPANY, for value received,
agrees and promises to pay

TO THE BEARER HEREOF

The Sum of

ONE THOUSAND DOLLARS (\$1,000.00)

lawful money of the United States of America, on the first day of July A. D. One Thousand Nine Hundred and Twenty-three, at the office of VIRGINIA TRUST COMPANY, in the city of Richmond, Virginia, upon surrender of this bond; with interest thereon, after date hereof, at the rate of five per cent (5%), payable semi-annually, at the office of the said Virginia Trust Company on the first days of January and July in each year, upon the presentation and surrender of the annexed coupons as they severally fall due as provided herein.

“This bond is one of a series numbered consecutively from one to two hundred, both numbers inclusive, each for the sum of ONE THOUSAND DOLLARS (\$1,000.00), of like form, tenor and date; the payment whereof is secured by a first mortgage or deed of trust bearing even date herewith, and duly executed and delivered by COMMERCIAL BUILDING COMPANY to VIRGINIA TRUST COMPANY, Trustee in trust, upon all of the property of COMMERCIAL BUILDING COMPANY, to secure the payment of said bonds and interest.

“This bond shall not become obligatory until it shall have been authenticated by the certificate of the said VIRGINIA TRUST COMPANY, Trustee, endorsed hereon.

IN WITNESS WHEREOF, The said COMMERCIAL BUILDING COMPANY has caused this bond to be signed in its name by its president, and its corporate seal to be hereto affixed and attested by its secretary and treasurer, this the first day of July A. D. 1913.

ATTEST:

By _____

President.

Secretary and Treasurer.

“\$25.00”

COMMERCIAL BUILDING COMPANY will pay to the bearer TWENTY-FIVE DOLLARS (\$25.00), at the office of VIRGINIA TRUST COMPANY, in the City of Richmond, Virginia, on the surrender hereof on the first day of _____, 19____, being six months' interest on Five Per Cent First Mortgage Bond No._____.

Treasurer.

“CERTIFICATE OF TRUSTEE”

“It is hereby certified that this bond is one of the series of bonds mentioned in the mortgage or deed of trust referred to within.”

By _____

President.

"RESOLVED FURTHER, That the president, secretary and counsel of the company proceed to have the said bonds duly lithographed or printed in the form heretofore adopted, and to have the deed of trust duly executed and registered, and the bonds certified by the trustee; and when said bonds have been made ready for delivery, they shall be delivered to the treasurer, who shall sell the same as he may be from time to time ordered by the board of directors, and apply the proceeds arising therefrom to the prosecution of the company's business."

The said resolution was seconded by Mr. Thomas H. Briggs. A vote being taken, all of the directors of the company voted in favor of its adoption, and none against it.

The following is the form of the Mortgage or Deed of Trust this day approved by the Board of Directors:

DEED OF TRUST.

STATE OF NORTH CAROLINA,
COUNTY OF WAKE.

THIS DEED, made this, the 1st day of July, in the year of our Lord, One Thousand Nine Hundred and Thirteen, by and between Commercial Building Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of North Carolina, having its principal office and place of business in the City of Raleigh, County of Wake, state aforesaid, party of the first part, and VIRGINIA TRUST COMPANY, a corporation duly created, organized and existing under and by virtue of the laws of Virginia, having its principal office and place of business in the City of Richmond, in said state, as Trustee, as hereinafter more particularly set forth, party of the second part: Witnesseth,

THAT WHEREAS, at a meeting of the stockholders of COMMERCIAL BUILDING COMPANY, duly called and held at Raleigh, North Carolina, on the 14th day of June, 1913, resolutions were duly adopted, all of the stockholders of said company in person having voted in favor of said resolutions, in words and figures as follows, to-wit:

"RESOLVED by the stockholders of Commercial Building Company in meeting duly called and assembled:

"That the proper officers of this company are hereby authorized and instructed to execute a mortgage or deed of trust, in the

name of the company, upon all of the property of the company, to Virginia Trust Company of Richmond, Virginia, Trustee, in a form to be approved by the directors and counsel selected by them, for the purpose of securing two hundred (200) bonds of a series to be known as Commercial Building Company Five Per Cent First Mortgage Bonds, of even date and priority, without regard to the time of their respective sale and delivery or to the individual issue to the respective holders thereof, to be dated July 1st, 1913, and to be payable on the 1st day of July, 1923, which said bonds shall be numbered from one to two hundred, both numbers inclusive, and shall be in denominations of One Thousand (\$1,000.00) Dollars each; bearing interest at the rate of five per cent per annum, payable semi-annually on the first days of January and July of each year, until the whole principal and interest, shall have been fully paid and discharged; the funds to be derived from the issue and sale of said bonds to be used in the prosecution of the company's business.

“Resolved, Further, That the Board of Directors place the said bonds on the market as soon as practicable, selling them for not less than par.”

AND WHEREAS, The Board of Directors of the Commercial Building Company, at a meeting duly called and thereafter held, in Raleigh, North Carolina, on June 14th, 1913, adopted resolutions in words and figures, as follows, to-wit:

“WHEREAS, The stockholders of Commercial Building Company at their meeting held on June 14th, 1913, authorized and instructed the directors to cause to be prepared and executed a mortgage or deed of trust upon all of the property of the company, for the purpose of securing certain bonds therein described, for the purpose of obtaining funds for the prosecution of the company's business:

“NOW, THEREFORE, BE IT RESOLVED, by the Directors of Commercial Building Company that the President and Secretary of Commercial Building Company are hereby authorized and directed, in its behalf, and under its corporate seal, in the form this day approved by the board of directors and counsel, and which is hereby directed to be spread upon the minutes, to execute and deliver a deed of trust to Virginia Trust Company of Richmond, Va., as trustee, to secure a series of two hundred bonds known as Commercial Building Company Five Per Cent First Mortgage Bonds, of even date and priority, without regard to

the time of their respective sale and delivery, or the individual issue to the respective holders thereof, payable on the first day of July, 1923, numbered from one to two hundred, both numbers inclusive, for One Thousand (\$1,000.00) Dollars each, and bearing interest at the rate of five per cent per annum, payable semi-annually on the first days of January and July in each year, until the whole principal and interest is paid; which said bonds are to be issued and sold, and from time to time signed in the name of this company by the then president, and have the corporate seal of the company thereto affixed and attested by the then secretary and treasurer (the signature of the treasurer upon the coupons attached thereto only being engraved or printed in fac-simile upon the coupons) and all of like form and tenor, except as to the serial numbers thereon, which said bonds and coupons shall be in words and figures following:

STATE OF NORTH CAROLINA,
COUNTY OF WAKE,
CITY OF RALEIGH.

No. -----

\$1,000.00.

COMMERCIAL BUILDING COMPANY
Five Per Cent First Mortgage Bond.

COMMERCIAL BUILDING COMPANY, for value received,
agrees and promises to pay

TO THE BEARER HEREOF

The Sum of

ONE THOUSAND DOLLARS (\$1,000.00),

lawful money of the United States of America, on the first day of July, A.D. One Thousand Nine Hundred and Twenty-Three, at the office of VIRGINIA TRUST COMPANY, in the city of Richmond, Virginia, upon surrender of this bond; with interest thereon, after date hereof, at the rate of five per cent (5%) per annum, payable semi-annually, at the office of the said VIRGINIA TRUST COMPANY on the first days of January and July in each year, upon the presentation and surrender of the annexed coupons as they severally fall due as provided herein.

"This bond is one of a series numbered consecutively from one to two hundred, both numbers inclusive, each for the sum of ONE THOUSAND DOLLARS (\$1,000.00), of like form, tenor

and date; the payment whereof is secured by a first mortgage or deed of trust bearing even date herewith, and duly executed and delivered by COMMERCIAL BUILDING COMPANY to VIRGINIA TRUST COMPANY, Trustee in trust, upon all of the property of COMMERCIAL BUILDING COMPANY, to secure the payment of said bonds and interest.

"This bond shall not become obligatory until it shall have been authenticated by the certificate of the said VIRGINIA TRUST COMPANY, Trustee, endorsed thereon.

"IN WITNESS WHEREOF, the said COMMERCIAL BUILDING COMPANY has caused this bond to be signed in its name by its president, and its corporate seal to be hereto affixed and attested by its secretary and treasurer, this the first day of July, A. D., 1913.

COMMERCIAL BUILDING COMPANY,

By A. L. Baker,
President."

J. M. Sherwood,
Secretary and Treasurer."

"\$25.00.

COMMERCIAL BUILDING COMPANY will pay to the bearer TWENTY-FIVE DOLLARS (\$25.00), at the office of VIRGINIA TRUST COMPANY, in the City of Richmond, Virginia, on the surrender hereof on the first day of _____, 19____, being six months' interest on five per cent first mortgage bond No. _____

J. M. Sherwood,
Treasurer."

"Certificate of Trustee."

"It is hereby certified that this bond is one of the series of bonds mentioned in the mortgage or deed of trust referred to within.

"VIRGINIA TRUST COMPANY,
By H. W. Jackson,
President."

"RESOLVED FURTHER, That the president, secretary and counsel of the company proceed to have the said bonds duly lithographed or printed in the form heretofore adopted, and to have the deed of trust duly executed and registered, and the bonds certified by the trustee; and when said bonds have been made ready for delivery, they shall be delivered to the treasurer,

who shall sell the same as he may be from time to time ordered by the Board of Directors, and apply the proceeds arising therefrom to the prosecution of the company's business."

AND WHEREAS, At an adjourned meeting of the stockholders of COMMERCIAL BUILDING COMPANY, held in the City of Raleigh, N. C., on the 14th day of June, 1913, the following resolutions were adopted:

"WHEREAS, The directors of the company have this day passed upon and approved the form of a deed of trust to be executed on behalf of this company to Virginia Trust Company of Richmond, Va., Trustee, to secure the issue of two hundred bonds, each for the sum of One Thousand (\$1000.00) Dollars, bearing interest at the rate of five per cent per annum, payable semi-annually on the first days of January and July in each year, the principal whereof is due and payable on the 1st day of July, 1923; and have also passed upon and approved the form of said bonds and coupons:

"NOW, THEREFORE, BE IT RESOLVED, By the stockholders of Commercial Building Company that the said bonds be, and they are hereby, approved, both as to form and substance; and, when issued by the proper officers of this company, are declared to be the valid obligations of this company; and no obligation shall rest upon the purchasers of the same to see to the application of the funds derived from the sale of the same; that the form of said coupons is likewise approved as to form and substance; and that said deed of trust or mortgage is likewise approved, both as to form and substance; and the president and secretary are directed to execute the same for and on behalf of this company and have the seal of this company affixed thereto; and when likewise executed by the Trustee, have the same recorded in the Registry of Wake County, North Carolina; and do any and all other acts necessary to give to said mortgage or deed of trust full force and validity as a first lien upon the property of this company.

"RESOLVED FURTHER, That when said bonds shall have been issued or sold, the secretary and treasurer is directed to detach from said bond any matured coupons and to hold the same in the treasury and report the same to the next meeting of the Board of Directors; and credit the coupons for the current semi-annual period with interest up to the day when such bond shall be sold or issued, so that this company may not be liable for

more than the par value of the bond, with interest from the time of issue. But, in the hands of purchasers, said bonds, with all coupons attached, and subject to any credits as aforesaid, shall be valid and binding obligations of this company."

AND WHEREAS, This indenture is the identical instrument referred to and approved in the aforesaid resolutions of the directors and stockholders adopted on the 14th day of June, 1913, as aforesaid:

NOW, THEREFORE, the COMMERCIAL BUILDING COMPANY, party of the first part, in consideration of the premises, and of the sum of TEN (\$10.00) DOLLARS to it in hand paid by the party of the second part, the receipt of which is hereby fully acknowledged, has given, granted, bargained and sold, and by these presents does hereby give, grant, bargain and sell and convey unto the VIRGINIA TRUST COMPANY, party of the second part, as Trustee as aforesaid, and its successors and assigns forever, that certain tract or parcel of land, with the improvements and buildings thereon, situate in the City of Raleigh, County and State aforesaid, and at the southwest intersection of East Martin and South Wilmington streets, in said city, and known as the lot upon which has recently been erected the Commercial National Bank building, and adjoining the lots of Stonewall J. Adams, Grimes Realty Company and Mrs. Lucy A. Haywood, and bounded by a line running as follows:

BEGINNING at the Southwest intersection of East Martin and South Wilmington streets, and running thence southward with the west line of South Wilmington street eighty-one (81) feet and eleven (11) inches to the corner of the lot of Stonewall J. Adams; thence westward with the line of said Adams' lot sixty (60) feet and four and one-half ($4\frac{1}{2}$) inches to the corner of the said Adams' lot; thence southward with the line of said Adams' lot thirty-nine (39) feet and five (5) inches to the line of the property of the Grimes Realty Company; thence westward with the line of the Grimes Realty Company thirty-one (31) feet and three and one-half ($3\frac{1}{2}$) inches to the corner of the lot owned by Mrs. Lucy A. Haywood, in the line of the said Grimes Realty Company's property; thence northward with the line of Mrs. Lucy A. Haywood's property one hundred and nineteen (119) feet and ten (10) inches to the south side of East Martin street; thence eastward with the south line of East Martin street ninety-one (91) feet and ten and three-fourths ($10\frac{3}{4}$) inches to the beginning.

This is the tract of land which was conveyed by The Commercial National Bank of Raleigh to Commercial Building Company by deed dated July 1st, 1913, and on the same day filed for registration in the Registry of Wake County, N. C., reference to which is hereby made.

This parcel or tract of land is further known as being composed of two distinct and adjoining lots, one of which consists of the lot, one-half interest in which was conveyed to the Commercial & Farmers' Bank by W. H. Pace, Trustee of Len H. Adams, by deed dated August 18th, 1891, and recorded in the Registry of Wake County, N. C., in Book 118, page 150. The other one-half interest in said lot was conveyed by W. H. Pace, Trustee, as aforesaid to A. F. Page, by deed dated the 18th day of August, 1891, and recorded in the Registry of Wake County, N. C., in Book 118, page 148; and afterwards, by appropriate deeds, conveyed to the grantor herein. And the other lot is known as the lot which was conveyed by J. H. Anderson and wife and E. J. Thiem and wife to Henry T. Hicks, Trustee, by deed dated August 11th, 1911, and recorded in the Registry of Wake County, N. C., in Book 259, page 121. And reference is hereby made to all of said deeds.

TO HAVE AND TO HOLD the aforesaid lands, buildings, premises and property, together with all the appurtenances, privileges and other rights thereunto in any wise belonging or appertaining, unto it, the said VIRGINIA TRUST COMPANY, TRUSTEE, party of the second part, its successors and assigns forever.

IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of all and every present and future holders of any and every bond issued under and secured by this indenture, and for the aforesaid payment thereof, when payable, in accordance with the true intent and meaning of the stipulations of this deed, without preference, priority or distinction as to lien or otherwise of any one bond over any other bond, without regard to the time of their respective sale and delivery, so that each and every bond issued as aforesaid shall have the same right, lien and privilege under and by this deed, and the principal and interest of every such bond shall be equally and proportionately secured thereby, as follows:

Possession By Trustee.

That until default by the party of the first part in the payment of the principal or interest on said bonds, or any, or either

of them, or any part of said principal or interest, or until default by the party of the first part in something herein required by it to be kept and done, or performed, and such default shall have continued for ninety (90) days, the said party of the first part shall and may possess, hold, use and enjoy all of the premises, property, buildings and other benefits herein mortgaged and conveyed or intended to be conveyed, and each and every part thereof, and have and receive the tolls, income, issues and profits thereof and of every part thereof.

Foreclosure.

Upon default by the party of the first part in the payment of the principal or interest on such bonds, or any, or either of them, or any part of the principal or interest, and such default shall have continued for ninety (90) days, or upon default by the party of the first part in something required by it to be kept, done or performed, and such default shall have continued for thirty (30) days after notice to the party of the first part, then and in every such case, the holders of twenty-five (25%) per cent in amount of the bonds then outstanding, at their option, in writing, may declare to the party of the second part, its successors and assigns, the whole of the principal of said bonds then outstanding, with all arrearages of interest thereon, to be, and the same shall thereupon be due and payable, although the period limited for the payment thereof may not then have expired; then and in each and every such case, the party of the second part, its successors and assigns, with or without entry, personally or by attorney, may sell to the highest and last bidder the therein conveyed lands, buildings and premises, and all rights, title and interests of the party of the first part therein and the right of redemption thereof, at public auction, at the courthouse door, in the County of Wake, State of North Carolina, for cash, except as hereinafter prescribed, after having first published a notice of the time and place of such sale in a newspaper published in the City of Raleigh, once a week for four (4) successive weeks, and convey the said lands, property, rights, privileges and benefits to the purchaser in fee simple; or, at the option of the part of the second part, its successors and assigns, upon proper security and indemnity given to it, the party of the second part, its successors and assigns may proceed to protect and enforce the rights of the bondholders under this deed of trust by suit, action or other apt legal or equitable proceeding; and out of the moneys arising from

such sale, whether under the powers of this deed of trust, or under an order of a court of competent jurisdiction, to retain the principal and interest which should then be due upon the said bonds then outstanding after first paying the just costs and charges of such advertisement, foreclosure and sale and the just costs, charges and expenses of the trustee, paying the surplus, if any, unto the party of the first part, its successors and assigns; which sale so to be made, shall forever be a perpetual bar, both at law and in equity, against the said party of the first part, its successors and assigns, and all other persons and corporations, claiming, or pretending to claim, the aforesaid premises, property, buildings, and other rights and benefits, or any part thereof, by, through, from or under them, or either of them.

Bondholders May Purchase.

And at such sale the holder or holders of any of the bonds hereby secured may purchase the whole or any part of the aforesaid premises, lands, buildings, property and other benefits, and in such case payment may be accepted in cash to an amount equal to the aforesaid just costs and charges of said trustee, and of such advertisement or foreclosure, and sale, and in bonds and coupons upon any of the said bonds then outstanding which coupons shall be at that time in default. And upon such sale, the receipt of the said party of the second part, its successors and assigns, shall be a full acquittance to the purchaser or purchasers, who shall not be bound to see to the application of said purchase money, bonds or coupons realized upon such sale.

Failure to Present Bonds For Payment.

Upon the failure of the holder or holders of any of the bonds secured by this deed of trust to present for payment, when due, the same or any part thereof, or to present for payment, when due, the coupons thereof, or any part thereof, to the party of the second part, its successors or assigns, the party of the first part may deposit with the party of the second part, its successors or assigns, an amount of money equal to the said bonds and coupons respectively, or of any part thereof, when due, for the payment thereof, and thereupon the said party of the first part, its successors or assigns, shall be discharged of and from all liability for respectively each and all of said bonds and coupons for the payment of which deposit shall so, as aforesaid, have been made.

The Trustee.

That the trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such attorney or agent be selected with reasonable care, or for anything whatever in connection with this trust, except misconduct or gross negligence. The trustee shall not be under any obligation to take any action towards the execution or enforcement of the trust hereby created, which in its opinion shall be likely to involve it in any expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the trustee, furnish it reasonable indemnity against such expense or liability; nor shall the trustee be required to take any action upon any breach of any covenant contained herein, except upon the conditions herein expressed, and after notice of such breach from one or more of the holders of the bonds hereby secured, together with the tender of the indemnity aforesaid, anything herein contained to the contrary notwithstanding. The trustee shall not be required to insure the said property, to list or pay taxes on the same, or to do any other act not specifically required of it in this instrument. The trustee shall be entitled to reasonable compensation for all services rendered and reimbursement for all just expenses incurred by it in execution of the trusts hereby created.

Removal of Trustee.

The trustee may be removed at any time by an instrument in writing, under the hands and seals of two-thirds ($\frac{2}{3}$) in amount of the holders of the bonds secured hereby and then outstanding, and in case of resignation or removal, as herein provided, a majority in amount of the holders of the bonds then outstanding shall have the right and power by instrument in writing, under their hands and seals, to appoint a new trustee to fill such vacancy; and until such appointment be so made by a majority of the bondholders, the board of directors of the COMMERCIAL BUILDING COMPANY may appoint a new trustee to fill such vacancy for the time being, and in every such case, the new trustee so appointed, while he or it continues as such, shall have and possess and be subject to the rights, powers and duties as though originally trustee hereunder. Registration in the office of the register of deeds of Wake County, N. C., of the lawful appointment of a new trustee shall be sufficient to transfer all title granted by this instrument to such new trustee.

Certification of Bonds.

It is hereby expressly covenanted and agreed that all bonds hereby secured shall be executed by the **COMMERCIAL BUILDING COMPANY** and delivered for certification to the trustee, who shall thereupon certify and deliver the same to the party of the first part, or upon its order, and not otherwise. Only such bonds as shall bear the trustee's certificate duly endorsed thereon and duly signed shall be secured by this deed of trust, or shall be entitled to any lien or benefit hereunder; and every such certificate of the trustee upon any bond shall be conclusive evidence that the bonds so certified have been duly issued hereunder, and are entitled to the benefit of the trusts hereby created.

Covenants of Commercial Building Company.

And the party of the first part hereby covenants to and with the party of the second part, and its successors and assigns, and to and with the holders of the bonds aforesaid:

1. That the party of the first part is seized of said premises and property herein conveyed in fee simple, and has a good and lawful right to convey the same; that the same are free and clear from any and all encumbrances and that it will forever warrant and defend the title to, and possession of, the same against the lawful claims and demands of any and all persons whomsoever.

2. That it shall and will duly and punctually pay or cause to be paid, to every holder of any bond issued hereunder and secured hereby the principal and interest accruing thereon at the dates and rates and in the manner mentioned therein, or in the coupons thereto belonging, according to the true intent and meaning thereof.

3. That it shall and will keep the buildings now erected on said premises, and personal property located thereon, insured in some reliable insurance company, or companies, authorized to do business in the State of North Carolina, and having an office in the city of Raleigh, in at least the sum of One Hundred Thousand (\$100,000.00) Dollars, said insurance to be for the benefit of the holders of the bonds issued under this deed of trust and to be payable to the parties hereto as their interest may appear; that it will, from time to time, take out new policies or renew expiring policies; and if the party of the first part shall fail, for

the space of ten hours, to keep the buildings properly so insured, it shall be lawful for the party of the second part, at the request of any bondholder, or on its own motion, to effect such insurance, and any sums so expended by the party of the second part shall be deemed to be principal money bearing interest from the date of such payment, and secured by this deed of trust and payable before the payment of any sum upon the principal or interest upon the bonds and coupons hereby secured.

4. That it shall and will, from time to time, pay and discharge the taxes, assessments, judgments and other charges lawfully imposed upon the premises herein conveyed, or upon any part thereof, or upon the income, rents and profits thereof, the lien of which might and could be held prior to the lien hereof, so that the priority of this deed of trust shall be fully preserved.

5. Should any deed, conveyance or instrument in writing from the party of the first part, or from any resigned or removed trustee be required for any new trustee as needful or proper for vesting and confirming in and to it such estate, any and all such deeds and instruments in writing shall, on request, be made, executed, acknowledged and delivered by the party from whom they may be required.

6. That it will have this indenture duly recorded in the registry of Wake County, North Carolina, as soon as practicable after the execution hereof, paying all proper fees and charges therefor.

The VIRGINIA TRUST COMPANY, TRUSTEE, party of the second part, hereby accepts the trusts in this deed of trust declared and imposed, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

IN TESTIMONY WHEREOF, the said COMMERCIAL BUILDING COMPANY, party of the first part, has caused these presents to be signed in its name by its president, and attested by its secretary, and its corporate seal to be hereto affixed, all by order of its board of directors and of its stockholders as hereinbefore set forth; and the said VIRGINIA TRUST COMPANY, TRUSTEE, party of the second part, in token of its acceptance of the trusts hereby created and declared, has caused these presents to be signed in its name by its president, and attested by its secretary and its corporate seal to be hereto affixed, by order

of its board of directors; all on this the first day of July, A. D. 1913.

Commercial Building Company,
By A. L. Baker,
President.

ATTEST:
J. M. Sherwood,
Secretary of Commercial Building
Company.

(Seal).

Virginia Trust Company, Trustee,
By H. W. Jackson,
President.

ATTEST:
L. D. Aylett,
Secretary Virginia Trust Company.
(Seal).

NORTH CAROLINA, }
WAKE COUNTY. }

I, C. A. Gosney, a Notary Public in and for the above named state and county, do hereby certify that this day personally appeared before me J. M. Sherwood, secretary, with whom I am personally acquainted, who being by me duly sworn, says that A. L. Baker is the president and J. M. Sherwood is the secretary of the COMMERCIAL BUILDING COMPANY, one of the corporations described in and which executed the foregoing instrument; that he knows the common seal of the corporation; that the seal affixed to the foregoing instrument is the said common seal of the corporation; that the name of the corporation was subscribed thereto by said president; and that said president and secretary subscribed their names thereto, and said common seal was affixed, all by order of the board of directors; and that said instrument is the act and deed of said corporation.

Witness my hand and notarial seal, this the 1st day of July, A. D. 1913.

(Seal).

C. A. Gosney,
Notary Public, Wake County N. C.
My commission expires the 29th day of
January, 1914.

STATE OF VIRGINIA,
COUNTY OF HENRICO, }
CITY OF RICHMOND.

I, Jno. H. Southall, a Notary Public in and for the above named state and county, do hereby certify that this day personally appeared before me L. D. Aylett, secretary, with whom I am personally acquainted, who being by me duly sworn, says that H. W. Jackson is the president and L. D. Aylett is the secretary of VIRGINIA TRUST COMPANY, one of the corporations described in and which executed the foregoing instrument: that he knows the common seal of the corporation; that the seal affixed to the foregoing instrument is the said common seal of the corporation; that the name of the corporation was subscribed thereto by said president; and that said president and secretary subscribed their names thereto, and said common seal was affixed, all by order of the board of directors; and that said instrument is the act and deed of said corporation.

Witness my hand and notarial seal, this 2nd day of July, A. D. 1913.

(Seal).

Jno. H. Southall,
Notary Public, Henrico County, Va.
My commission expires the 29th day
of February, 1914.

The president then stated that as the directors had been elected since their meeting at four o'clock P. M. this day, it would perhaps be better to again go into the election of officers for the current year.

For procedure for election of officers see page 697.)

MINUTES OF ADJOURNED MEETING OF STOCKHOLDERS OF COMMERCIAL BUILDING COMPANY

Directors' Room, Commercial National Bank,
Raleigh, N. C., June 14th, 1913.
Five Thirty O'clock, P. M.

This being the time and place for holding the adjourned meeting of the stockholders of Commercial Building Company (according to adjournment had of the meeting called and held at this place on the 14th day of June, 1913) the President, Mr. A. L. Baker, resumed the chair and called the meeting to order. Mr. J. M. Sherwood acted as secretary.

The president then presented a waiver of notice of the meeting, duly signed by all the stockholders, which was read and ordered spread upon the minutes of the meeting. The following is a copy of the notice:

(Here insert Waiver.)

The secretary then read the minutes of the meeting held this day at four o'clock P. M., including the resolution adopted at said meeting, adjourning the same to this place and hour, all of which appearing to be regular were approved and ordered filed, with the records of the company.

Upon a call of the roll by the president, it was ascertained that each and every stockholder was present in person; and that every share of stock of the company, fifty in number, was represented by its owner.

The president stated that the purpose of the meeting was to consider and pass upon the form of bonds, coupons and deed of trust this day approved by the board of directors. The president then presented the form of bonds and coupons and the form of deed of trust, this day approved by the directors. After consideration and discussion of the same, Mr. Carey J. Hunter offered the following preamble and resolution:

WHEREAS, the directors of the company have this day passed upon and approved the form of a deed of trust to be executed on behalf of this company to Virginia Trust Company of Richmond, Va., trustee, to secure the issue of two hundred bonds, each for the sum of One Thousand (\$1000.00) Dollars, bearing interest at the rate of five per cent per annum payable semi-annually on the first days of January and July in each year, the principal whereof is due and payable on the 1st day of July, 1923; and have also passed upon and approved the form of said bonds and coupons;

NOW, THEREFORE, BE IT RESOLVED by the stockholders of Commercial Building Company that the said bonds be, and they are hereby, approved, both as to form and substance; and, when issued by the proper officers of this company, are declared to be valid obligations of this company; and no obligation shall rest upon the purchasers of the same to see to the application of the funds derived from the sale of the same; that the form of said coupons is likewise approved as to form and substance; and that said deed of trust or mortgage is likewise approved, both

as to form and substance; and the president and secretary are directed to execute the same for and on behalf of this company and have the seal of this company affixed thereto; and, when likewise executed by the trustee, have the same recorded in the registry of Wake County, North Carolina; and do any and all other acts necessary to give to said mortgage or deed of trust full force and validity as a first lien upon the property of this company.

RESOLVED FURTHER, that when said bonds shall have been issued or sold, the secretary and treasurer is directed to detach from said bond any matured coupons and to hold the same in the treasury and report the same to the next meeting of the board of directors; and credit the coupons for the current semi-annual period with interest up to the day when such bond shall be sold or issued, so that this company may not be liable for more than the par value of the bond, with interest from the time of issue. But, in the hands of purchasers, said bonds, with all coupons attached, and subject to any credits as aforesaid, shall be valid and binding obligations of this company.

Said resolution was seconded by Mr. Thomas H. Briggs and a stock vote being taken, fifty votes were cast in favor of said resolution and none against it. The entire issue of stock, and all the stockholders having voted in favor of said resolution, the president declared the same unanimously adopted.

Mr. Carey J. Hunter offered the following resolution:

Resolved by the stockholders of Commercial Building Company, that the president and treasurer of this company are hereby authorized to hypothecate or pledge, at par, any part of the Two Hundred Thousand (\$200,000.00) Dollars of bonds of Commercial Building Company to protect the loans already made for the use of the company, or to be made for the use of the company.

The said resolution was seconded by Mr. Thomas H. Briggs. A vote being taken fifty votes were cast in favor of said resolution and none against it. The entire vote of the stockholders having been cast in favor of said resolution, the president declared the same duly adopted.

Upon motion of Mr. B. F. Montague, duly seconded by Mr. Carey J. Hunter, the meeting adjourned, subject to the call of the president. Adjourned.

J. M. Sherwood,
Secretary.

Minutes of Meeting of Stockholders of Commercial Building Company.

Directors' Room, Commercial National Bank,
Raleigh, N. C., July 1st, 1913,
11:30 O'clock A. M.

Pursuant to a call of the president, the stockholders of Commercial Building Company met at the above named time and place. The meeting was called to order by the president, Mr. A. L. Baker. Mr. J. M. Sherwood acted as secretary.

Upon a roll call it was ascertained that the following stockholders were present: Messrs. A. L. Baker, B. F. Montague, T. H. Briggs, C. J. Hunter and J. M. Sherwood, they being all of the stockholders of the company.

The president presented a call for the meeting, which was read and ordered spread upon the minutes of the meeting. The following is a copy of the call:

(Here insert call).

The president then presented a waiver of notice of the meeting duly signed by all of the stockholders, which was read and ordered spread in full upon the minutes. The following is a copy of the waiver of notice:

(Here insert waiver).

The president then announced that all of the stockholders being present, and every share of stock of the company being represented, the meeting was ready for business.

The secretary then read the minutes of the last meeting which were approved. The president thereupon stated the objects of the meeting as set out in the call.

The president then presented his report, which was read, and upon motion of Thomas H. Briggs, duly seconded by Mr. Carey J. Hunter, approved and ordered spread upon the minutes of the meeting. The following is a copy of the president's report:

Report of President to Stockholders of Commercial Building Company.

Raleigh, N. C., July 1st, 1913.

To the stockholders of Commercial Building Company:

I beg leave to report that your officers have carried out the instructions and directions given by you in resolutions adopted on the 11th and 14th days of June, 1913.

The certificate of incorporation or charter of this company has been amended so as to increase the authorized capital stock of this company from fifty thousand to one hundred and five thousand dollars. Said certificate of change has been recorded in the office of the clerk of the superior court of Wake County, N. C.

Your officers have caused to be prepared and printed certificates of stock, and the same are now ready for use by the company. Your officers have also caused to be prepared two hundred bonds of the par value of one thousand dollars each, and the same are now ready for execution by the company. They have also, in accordance with your instructions, had deed of trust on all the property of this company to secure the issue of said bonds prepared; and the same is now ready for execution by the company.

Your officers recommend that the transfer of the property of the Commercial National Bank of Raleigh situate at the southwest intersection of East Martin and South Wilmington Streets, in the city of Raleigh; and the issuance and delivery to said Commercial National Bank of one thousand (1000) shares, of the par value of one hundred (\$100.00) dollars each, of the cumulative, preferred six percent stock of this company, in payment for said property, as authorized by former resolutions of this company, be approved and that you accept and approve the deed from the Commercial National Bank of Raleigh to this company for said property.

Your officers further recommend that you approve the execution of the deed of trust from this company to Virginia Trust Company, and the execution of the bonds to be secured thereby; said bonds being two hundred in number, each for the sum of one thousand (\$1,000.00) dollars, bearing five per cent interest, and due and payable July 1st, 1923, all of which were authorized by former resolutions of this company.

I herewith submit the said certificates of stock, said bonds and said deed of trust, for your inspection and approval.

Respectfully submitted,

A. L. Baker, President,
Commercial Building Company.

The president then submitted to the meeting the deed from The Commercial National Bank of Raleigh to Commercial Build-

ing Company for the property belonging to said bank and sold to this company.

Mr. Carey J. Hunter offered the following resolution:

RESOLVED, by the stockholders of Commercial Building Company in meeting duly called and assembled:

1. That the purchase of the property belonging to The Commercial National Bank of Raleigh, situate at the southwest intersection of East Martin and South Wilmington Streets in the City of Raleigh, by this company be, and the same is hereby, in all respects ratified, approved and confirmed. That the deed from said bank to this company for said property, this day exhibited to the stockholders of this company be accepted; and that the same be filed for record in the registry of Wake County, North Carolina.

2. That the form of the preferred stock of this company as prepared and printed by E. M. Uzzell & Company, and this day exhibited to the stockholders, be, and the same is hereby, in all respects, fully ratified, approved and confirmed; and when signed by the president and the seal of the company affixed thereto and attested by the secretary and treasurer, the same is declared to be binding upon this company. And the president and secretary-treasurer are hereby directed to execute and deliver to the Commercial National Bank of Raleigh, said certificates of stock aggregating one thousand (1000) shares in payment for the property this day sold to this company by said bank; the number of shares to be included in each certificate of stock to be as directed by said bank.

3. That the deed of trust from this company to Virginia Trust Company, trustee, signed in the name of this company by the president with the seal of the company thereto affixed and attested by the secretary be, and the same is hereby, in all respects, fully ratified, approved and confirmed. And the president is hereby directed to deliver the same to Virginia Trust Company for execution; and, when executed by the trustee, have it recorded in the registry of Wake County, to be held by the company so long as any of the bonds secured thereby shall be outstanding.

4. That the bonds of this company heretofore authorized and printed or lithographed by Southern Stamp & Stationery Company of Richmond, Va., having likewise been exhibited to this meeting by the president, be, and the same are hereby, in all

respects, fully ratified, approved and confirmed; and the president is directed to sign each and every of said bonds in the name of this company and have the seal of the company affixed and attested by the secretary and treasurer, and have them certified by the trustee in accordance with the terms of said deed of trust. And when so executed and certified, said bonds shall be sold, negotiated or hypothecated, at not less than par, by the officers of this company in accordance with resolutions heretofore adopted.

5. That the acts of the officers and directors of this company in the purchase of the property from the Commercial National Bank of Raleigh, the issuance of preferred stock in payment therefor, the execution of the deed of trust to Virginia Trust Company, and the issuance of the bonds as aforesaid be, and the same are hereby, in all respects, fully ratified, approved and confirmed; and that if hereafter it should be necessary to do or perform any other act or thing to give complete validity to all of said acts of the officers and directors, the said officers and directors of this company are hereby fully authorized and empowered to do and perform such acts without further authority or direction from the stockholders of this company.

The said resolution was seconded by Mr. B. F. Montague. A vote being taken it was ascertained that every stockholder voted in person in favor of said resolution, and every share of stock of this company was cast in favor of the adoption of said resolution. The president thereupon declared the same duly adopted.

There being no further business, upon motion of Mr. B. F. Montague, duly seconded by Mr. Thomas H. Briggs, the meeting adjourned subject to the call of the president. Adjourned.

J. M. Sherwood, Secretary.

CHARTER OF PUBLIC SERVICE COMPANY WHOSE STOCK IS WITHOUT PAR VALUE AND WITH RIGHT OF MERGER.

CERTIFICATE OF INCORPORATION

—of—

THIS IS TO CERTIFY that we, -----

do hereby associate ourselves into a corporation under and by virtue of chapter 22, volume 1 of The Consolidated Statutes of

North Carolina and the several acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

1. The name of the corporation is_____.
2. The location of the principal office of the corporation in the state of North Carolina is at_____ in the city of_____, county of_____.
3. The object or objects for which the corporation is formed are:

To purchase, install, deal in, use, sell, lease or otherwise dispose of, machinery, generators, motors, lamps, poles, wires, apparatus, equipment, devices, supplies and articles of every kind pertaining to, or in anywise connected with, the production, use, distribution, regulation, control or application of electricity or electrical apparatus for light, heat, power, railway, manufacturing, and any and all other purposes; to acquire by purchase, lease, consolidation or otherwise, deal in, construct, use, operate, maintain, sell, convey, lease, or otherwise dispose of, any works, constructions, plants, systems, or parts thereof, and any and all rights or other property necessary or appropriate to the production, use, distribution, regulation, control or application of electricity for any purpose whatsoever to generate by water, steam, or other power, produce, buy, acquire, deal in, use, lease, sell, furnish, transmit and supply electricity in any form and for any purpose whatsoever;

To acquire by purchase, lease, consolidation or otherwise deal in, build, construct, equip, own, maintain, and operate street railways, motor bus lines and transportation lines for freight or passengers, whether operated by steam, electricity, or any other motive power whatever, and street railway properties of all kinds and descriptions (including parks, places of amusement and other usual or useful adjuncts to such properties and business), and to sell, convey, lease or otherwise dispose of, the same;

To manufacture, purchase, produce, sell, furnish and distribute, for light, heat, power and any other purpose whatsoever, natural and artificial gas, and to acquire by purchase, lease, consolidation or otherwise deal in, construct, equip, own, maintain, operate, sell, convey, lease or otherwise dispose of, all necessary and convenient works, conduits, plants, apparatus and connections for holding, receiving, purifying, manufacturing, selling, utilizing and distributing natural and artificial gas; and to man-

ufacture, purchase, sell or otherwise dispose of, chemicals or other products derived wholly or in part from gas and gas works or in the manufacture of gas; and to purchase, install, manufacture, deal in, use, sell, or otherwise handle or dispose of gas fixtures and appliances, in any way used or useful in connection with utilization or distribution of natural or artificial gas;

To manufacture, sell and distribute steam and hot water for heating and other purposes and to acquire, by purchase, lease, consolidation or otherwise deal in, build, construct, equip, own, maintain, operate, sell, convey, lease or otherwise dispose of, all necessary and convenient works, plants, apparatus and connections for manufacturing, selling and distributing steam and hot water; and to purchase, manufacture, install, and sell or otherwise deal in any and all appliances and fixtures used or useful in connection with the distribution of steam and hot water for heating and other purposes;

To acquire, by purchase, lease, consolidation or otherwise deal in, build, construct, equip, own, maintain and operate telephone and telegraph lines of all kinds and descriptions, and to sell, convey, lease, or otherwise dispose of, all necessary and convenient works, plants, apparatus and connections necessary or desirable in connection therewith; and to purchase, manufacture, install, use, sell or otherwise deal in any and all fixtures, appliances, or apparatus useful, necessary or desirable in connection with the installation or operation of telephone or telegraph lines or systems;

To acquire, by purchase, lease, consolidation or otherwise deal in, construct, own, equip, maintain, operate, sell, convey, lease or otherwise dispose of, ice and refrigerating plants;

To acquire, by purchase, lease, consolidation or otherwise deal in, construct, equip, own, hold, operate, maintain, sell, convey, lease or otherwise dispose of, water powers, power plants, hydroelectric plants, reservoirs, dams, canals, ditches, flumes, pipe lines and such other works, plants, equipments, appliances and appurtenances as may be necessary, useful or appropriate for impounding, storing, conveying, distributing and utilizing water for power, irrigation, sanitary, domestic, fire, manufacturing and other uses, and to use, supply, sell and otherwise dispose of, water for such uses; and to acquire by purchase, lease, consolidation or otherwise, deal in, construct, equip, own, hold, operate, maintain, sell, convey; lease or otherwise dispose of, hydraulic and other works, transmission lines, lines for the conveying of electric pow-

er and lines for lights, either or all, transforming and distributing stations and distributing circuits;

To acquire, by purchase, lease, consolidation or otherwise hold, use, own, sell, convey, lease or otherwise dispose of, rights of way, easements, privileges, grants, consents and franchises, including franchises or special grants or privileges or consents from the State of North Carolina or from cities, towns or other municipalities, for any of the foregoing businesses or purposes;

To acquire, by purchase, lease, consolidation or otherwise improve, hold, develop, use, let, sell, convey or otherwise dispose of, real estate and rights and interests in or in respect to real estate or other property; and to exercise the right of eminent domain in connection with any or all of the objects and purposes of the company for whatever purposes, and with respect to whatever property, that right is now or shall be hereafter authorized by law;

To apply for, obtain, register, acquire, give licenses under and dispose of patents, inventions, devices and processes, and any and all rights relating thereto;

To acquire, by purchase, lease, consolidation or otherwise deal in, construct, equip, own, hold, operate, maintain, sell, convey or otherwise dispose of ferries and such other works, plants, appliances and appurtenances as may be necessary, useful or appropriate for the construction or operation of ferries;

The corporation may purchase, hold, assign, transfer, mortgage, pledge or otherwise dispose of, the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state, and while owner of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon, and may issue in exchange for any such shares of capital stock, bonds, securities or evidences of indebtedness, its stocks, bonds, or other obligations;

The corporation shall have all the powers now or hereafter conferred by the laws of North Carolina on corporations formed for similar objects or purposes, and may carry on any business or operation deemed advantageous, incidental or necessary to any of the purposes or objects hereinbefore enumerated, and in general may do whatever a natural person might do in the premises, and may have one or more offices and conduct its business in all its

branches not only in the State of North Carolina, but in any state, territory, possession or dependency, of the United States and in any foreign state or country;

4. The amount of the total authorized capital stock of this corporation is-----shares, of which -----shares shall be preferred stock and -----shares shall be common stock. All of the shares of capital stock of this corporation are without nominal or par value. The preferred stock shall be entitled, in preference to the common stock, to dividends at the rate of seven dollars (\$7.00) per share per annum, and such dividends shall be cumulative from the date of issue. In any distribution of assets, other than by dividend from surplus or profits, the preferred stock shall also have a preference over the common stock until one hundred dollars (\$100) per share and seven dollars (\$7.00) per share per annum thereon from the date of issue, shall have been paid thereon by dividends or distribution; the preferred stock shall not receive any dividend in excess of seven dollars (\$7.00) per share per annum, nor any such distribution in excess of one hundred dollars (\$100) per share and the amount of accumulated dividends unpaid thereon, but the common stock alone shall receive all further dividends and shares in distribution. The preferred stock shall be subject to redemption at the option of the corporation upon any dividend date at one hundred and ten dollars (\$110) per share, plus any unpaid accumulated dividends to date of redemption, upon the vote of not less than a majority in interest of the outstanding common stock. Notice of the intention of the corporation to redeem the preferred stock shall be mailed thirty days before the date of redemption to each holder of record of preferred stock at his last known postoffice address, and upon the deposit of the aggregate redemption price with any bank or trust company in the city of New York named in such notice, payable to the order of the record holders of the preferred stock so to be redeemed on endorsement and surrender of their certificates, said holders shall, at the expiration of the said notice, cease to be stockholders.

The number of shares of capital stock with which the corporation will commence business is five (5).

5. The names and postoffice addresses of the subscribers to the capital stock of this corporation and the number of shares of the

capital stock subscribed for by each, the aggregate of which, to-wit, five (5) shares, is the amount of capital stock with which this company will commence business, as aforesaid, are as follows:

Name.	Postoffice Address.	No. of Shares
-----	-----	-----
-----	-----	-----

6. The duration of this corporation shall be ninety-nine (99) years.

7. The corporation shall have the power to sell, lease or exchange all its property, franchises and other rights and assets, or to merge or to be merged with, or to consolidate or be consolidated with, any other corporation, upon such terms as the Board of Directors may determine, provided a majority in interest of the stockholders vote in favor of such sale, merger or consolidation at a meeting called for the purpose in accordance with the by-laws.

Upon such vote or consent of the stockholders and upon vote of the Board of Directors as such, or as trustees upon dissolution, all the property, franchises, rights and assets of the corporation may be sold, conveyed, assigned and transferred as an entirety to a new corporation to be organized under the laws of the United States, the State of North Carolina, or of another state for the purpose of so taking over all the property and assets of this corporation, with the same or a different authorized number of shares of preferred and common stock and with the same preferences, voting powers, restrictions and qualifications thereof as may then attach to the preferred and common stock of this corporation, so far as the same shall be consistent with such laws of the United States or of North Carolina, or such other state, the consideration for such sale and conveyance to be the assumption by such new corporation of all of the then outstanding liabilities of this corporation and the issuance and delivery by the new corporation of shares of preferred stock (either with or without nominal or par value) of such new corporation equal in number to the number of shares of preferred stock of this corporation then outstanding, and shares of common stock (either with or without nominal or par value) of such new corporation equal in number to the number of shares of common stock of this corporation then outstanding. In the event of such sale each holder of preferred stock in this corporation agrees to forthwith surrender

for cancellation his certificate or certificates for preferred stock in this corporation and to receive and accept in exchange therefor, as his full and final distributive share of the proceeds of such sale and conveyance and of the assets of this corporation, a number of shares of preferred stock of the new corporation equal in number to the preferred stock of this corporation so surrendered, and each holder of common stock of this corporation agrees to forthwith surrender for cancellation his certificate or certificates for common stock of this corporation and to receive in exchange therefor from this corporation as his full and final distributive share of the proceeds of such sale and conveyance and of the assets of this corporation, a number of shares of common stock of the new corporation equal in number to the common stock of this corporation so surrendered.

Upon completion of such assignment and transfer the holders of the preferred stock of this corporation shall have no rights or interests in or against this corporation, except the right, upon surrender of certificates for preferred stock of this corporation properly endorsed, to receive from this corporation certificates for either shares of preferred stock without nominal or par value or shares of preferred stock with par value of such new corporation equal in number to the number of shares of preferred stock without nominal or par value of this corporation then outstanding, and the holders of common stock of this corporation shall have no rights or interests in or against this corporation, except the right upon surrender of certificates for common stock of this corporation properly endorsed, to receive from this corporation certificates for shares of common stock without nominal or par value or shares of common stock with par value of such new corporation equal in number to the number of shares of common stock without nominal or par value of this corporation then outstanding, as the case may be. Such new corporation may have all or any of the powers of this corporation, and the charter and by-laws of such new corporation may contain all or any of the provisions contained in the charter and by-laws of this corporation.

Upon the like vote, this corporation shall have power, as the attorney and agent of the holders of all of its outstanding stock, to sell, assign and transfer all such stock to a new corporation organized under the laws of the United States, the State of North Carolina, or any other state, and to receive as the consideration

therefor shares of preferred stock (with or without nominal or par value) of such new corporation equal in number to the number of shares of preferred stock of this corporation then outstanding, and shares of common stock (with or without nominal or par value) of such new corporation equal in number to the number of shares of common stock of this corporation then outstanding.

In order to make effective such a sale, assignment and transfer, this corporation shall have the right to transfer all its outstanding stock on its books and to issue and deliver new certificates therefor in such names and amounts as such new corporation may direct, without receiving for cancellation the certificates for such stock previously issued and then outstanding.

Upon completion of such sale, assignment and transfer, the holders of the preferred stock of this corporation shall have no rights or interests in or against this corporation, except the right, upon surrender of certificates for preferred stock of this corporation properly endorsed, to receive from this corporation certificates for shares of preferred stock of such new corporation equal in number to the number of shares of preferred stock of this corporation so surrendered, and the holders of common stock of this corporation shall have no rights or interests in or against this corporation, except the right upon surrender of certificate for common stock of this corporation properly endorsed, to receive from this corporation certificates for shares of common stock of such new corporation equal in number to the number of shares of common stock of this corporation so surrendered.

8. All corporate powers shall be exercised by the Board of Directors, except as otherwise provided by statute or by this certificate. An increase in the Board of Directors shall be deemed to create vacancies in the board, to be filled in the manner provided by the by-laws. Each director shall hold at least one share of stock in the corporation. The directors shall have the power to hold their meetings, to have one or more offices, and to keep the books of the corporation (except such books as are required by law to be kept within the State of North Carolina) outside of the State of North Carolina, at such places as may from time to time be designated by them. The Board of Directors shall have the power to make, alter or amend the by-laws of the corporation.

The Board of Directors shall have the power to authorize and cause to be executed mortgages and other liens upon the real and

personal property of the corporation as security for the bonds of the corporation or otherwise.

The Board of Directors shall have the power from time to time to fix and determine and to vary the amount to be reserved as a working capital of the corporation, and to direct and determine the use and disposition of the working capital.

9. Upon any issue for money or other consideration of any stock of the corporation whether authorized by the original certificate of incorporation or upon subsequent increase of capital, no stockholder shall be entitled to the right to subscribe for, purchase or receive any proportionate or other share of stock so to be issued, but the Board of Directors may dispose of any portion of such stock without offering the same in the first instance to the existing stockholders for subscription and purchase.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the _____ day of _____, 1922.

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

Signed, and sealed in
the presence of

CONSTITUTION AND BY-LAWS Of The COUNTRY CLUB

Article I.—Name and Objects.

This Club is incorporated and organized under the laws of North Carolina, under the name of _____ Country Club, and for the main purpose of establishing and maintaining a suitable clubhouse and grounds for outdoor and indoor sports of all kinds, and for the promotion of social recreation and intercourse among its members.

Article II.—Officers.

The officers of this Club shall be a president, a vice president, a secretary, a treasurer, and eight governors. The president, the vice president, the secretary and the treasurer shall be ex officio members of the Board of Governors.

Article III.—Governors.

At the organization meeting of the Club, the president, the vice president, the secretary, the treasurer, and four governors shall be elected to hold office for one year, and four governors shall be elected to hold office for two years. Thereafter, there shall be four governors elected annually to serve two years. No member shall hold the same office for more than one term consecutively, except the secretary and treasurer, who may be elected to succeed themselves.

Article IV.—Annual Meetings and Election of Officers.

The annual meeting for the election of officers and governors and the transaction of such other business as may be brought before such meeting shall be held on the first Monday in May in each year.

Section 1. The Board of Governors shall have power to make and amend the house rules; receive and redress complaints; care for and expend the funds of the Club.

Sec. 2. The board shall have power to fix penalties for violations of the constitution and rules, also to remit penalties for violations.

Contracts.

Sec. 3. The board shall have power to make leases and other contracts, to elect members of the Club, and to do such other things or acts (not inconsistent with the by-laws or constitution) as they may deem necessary for the welfare of the Club.

Sec. 4. Any member of the Board of Governors who shall absent himself for two consecutive regular meetings, unless he shall have previously obtained permission from the Board of Governors or shall present at the next regular meeting an excuse for his absence satisfactory to a majority of the members of the board present, shall be deemed to have resigned his office.

Board Meetings.

Sec. 5. Regular meetings of the board shall be held during the third week of each month, on such day and at such place and hour as may be designated by the president.

Sec. 6. Special meetings of the board may be called by the president or secretary. Special meetings of the board may be called by the president on written request of two or more mem-

bers thereof. The secretary shall give written notice to each member of the board at least twenty-four hours in advance of the holding of any regular or special meeting thereof.

Quorum.

Sec. 7. A majority of the members of the board shall constitute a quorum.

Article V.

Section 1. The election of officers and governors of the Club shall be by ballot, and a majority of the votes cast shall be required to elect.

Vacancies.

Sec. 2. In case of vacancy in the Board of Governors the board shall elect a successor to fill the unexpired term.

Special Meetings.

Sec. 3. The Board of Governors, upon their own motion or upon the written request of ten members, may, or upon the request of thirty members shall, call a special meeting of the Club by giving ten days' notice by mail to the voting members, and also by posting said notice on the bulletin board of the Club. The notice of every special meeting shall state the object or objects for which it is called, and no other business shall come before the meeting.

Quorum.

Sec. 4. Thirty members present in person shall constitute a quorum at a regular or special or called meeting.

Article VI.—Membership.

Membership in The-----Country Club shall be composed of:

(a) Resident members, which class shall be composed of all male members who reside within -----County, and who must be eighteen years of age. The initiation fee shall be \$25. Non-resident members may, with consent of the Board of Governors, elect to join this class by paying the additional fee required. The number of resident members is limited to five hundred. Only resident members shall vote and hold office.

(b) Non-resident members, consisting of those living outside of -----County, who shall pay annual dues of \$10 in advance.

(c) Lady members, who shall pay an initiation fee of \$10.

(d) Family Members. 1. The wife and children of any resident member, except boys over eighteen years of age (except as hereinafter provided) and any unmarried sisters or mother of such members residing in his home, shall, by virtue of that relationship, be considered family members, and are entitled to the privileges of the Club upon presentation of the name or names of each to the secretary, to be approved by the Board of Governors: Provided, that all children under fifteen years of age shall be accompanied by a parent or some active or associate or family member of the Club.

2. Sons (between the ages of eighteen and twenty-one years) of any resident member, who are bona fide students of any institution of learning outside of the city of -----, during their vacation, may become family members upon application to the secretary and approval of the Board of Governors.

3. All family members who desire to use the golf links, tennis courts and other special privileges must be subject to such fees as the Board of Governors may prescribe.

4. The names of all family members shall be posted by the secretary in the clubhouse.

The annual dues for each class of members shall be as follows:

- | | |
|-------------------------------|---------|
| 1. Resident members ----- | \$25.00 |
| 2. Non-resident members ----- | 10.00 |
| 3. Lady members ----- | 10.00 |

Resident and lady members' dues are payable quarterly on the first days of January, April, July and October.

Any member has the privilege of accompanying to the Club unmarried ladies not already members, but must pay for them such fees for the use of the golf course, tennis court or other special privileges as the Board of Governors may prescribe.

Sec. 3. Officers of the United States Army, Navy, or Marine Corps on the active lists temporarily residing in -----County may be elected members of the Club without payment of the initiation fee, but shall be subject to resident dues.

Sec. 4. Students of the-----College-----
who are non-residents of-----County, shall be
eligible for non-resident membership.

Sec. 5. Persons visiting-----from outside the State
of North Carolina may be permitted to have the privileges of the
Club, including the golf links, on such terms as the Board of
Governors may prescribe.

Article VII. Penalties.

Section 1. In case of the infraction of any By-Law or rule of the Club or of any conduct on the part of a member which may tend to endanger the good order, welfare, or character of the Club, the Board of Governors may suspend such member from all the privileges of membership for a period of not more than six months. Any member thus suspended shall be immediately notified in writing of his suspension, and cause or causes therefor. Such member may appeal from the decisions of the board by serving written notice of such appeal upon the board within ten days after his receipt of said decision, and on receipt of the notice of appeal the board shall call a special meeting of the Club, to be held within ten days thereafter, to consider said appeal. The appellant shall have the right to be present at such meeting or to be there represented by some other member, and after a statement by the board of the charges against him he shall be heard in his own defense, and witnesses may be introduced by either party; he shall then withdraw from the meeting, and the meeting shall confirm, modify, or reverse the decision of the board. If a member shall enter the clubhouse or grounds during the period of his suspension he shall *ipso facto* cease to be a member of the Club.

Sec. 2. For the causes aforesaid, any member may be expelled by a unanimous vote of a quorum of the Board of Governors, provided that ten days' notice shall have been given the offending member and each member of the Board of Governors of the meeting at which said expulsion shall be considered. Pending such action, the board may suspend such member in the ordinary way. Such member shall have the same right of appeal as in case of suspension.

Sec. 3. For misconduct or neglect of duty, any member of the Board of Governors may be expelled from office by a majority vote of a quorum of the members of the Club at a special meeting called for that purpose.

Article VIII.—Amendments.

Section 1. Any by-law may be amended at any meeting of the Club by a majority vote of the members present in person: Provided, a copy of the proposed amendment shall be filed with the Board of Governors, and a copy subscribed to by at least ten members of the Club, shall have been posted for at least thirty days before such meeting.

Article IX.—Officers.**President.**

Section 1. The president, or in his absence the vice president, shall preside at all meetings of the Club or board, and shall exercise general supervision and control over all the affairs of the Club.

Secretary.

Sec. 2. The secretary shall keep the minutes of all meetings of the Club and of the board, and have charge of the records of the Club; he shall give notice of all meetings of the Club to all voting members thereof; he shall give notice of all meetings of the board to all members thereof; he shall conduct the general correspondence of the Club.

Treasurer.

Sec. 3. The treasurer shall have charge of all moneys of the Club, and shall keep the accounts of the Club and report thereon to the board whenever called upon to do so by the board. His accounts shall be audited by the audit committee between the 15th and 30th day of each April and at such other times as the board may direct; he shall pay all bills and accounts against the club when properly certified to by the proper committee and approved by the president.

Sec. 4. The treasurer shall give bond in such amount and with such guarantee company as may be determined by the board: Provided, however, that the Club shall pay the expense or premium of such guarantee bond.

Article X.

Section 1. Dues of newly elected members shall begin on the first day of the month in which their election occurs.

Article XI.—Committees.

Section 1. The Board of Governors shall elect a house committee, an auditing committee, a greens committee, an aquatic committee, a grounds committee, tennis committee, and such other committees as they may deem advisable.

Sec. 2. The president, and in his absence the vice president, shall be ex officio a member of all committees.

Committee Meetings.

Sec. 3. Meetings of standing committees shall be held on call of the respective chairmen thereof or by the president.

House Committee.

Sec. 4. The house committee shall consist of three resident male members, and shall have charge of the clubhouse and stables. It shall furnish supplies, approve bills, engage and dismiss all club servants, except those under control of other committees, receive complaints and redress grievances. The expenditures of this committee for wages and supplies are subject to approval of the Board of Governors.

Audit Committee.

Sec. 5. The audit committee shall consist of three resident male members. It shall audit the accounts of the treasurer between the 15th and 30th of each April, and at such other times as the board may direct, submitting a report of such audit in writing to the board.

Greens Committee.

Sec. 6. The greens committee shall consist of three resident male members. It shall have charge of the golf course and the workshop of the professional; it shall employ a greens keeper and such assistants as shall be necessary; it shall order the purchase of necessary tools and materials; it shall select and have control of the caddies, who may be admitted to the course. The expenditures for wages and material by this committee are subject to approval by the Board of Governors.

Aquatic Committee.

Sec. 7. The aquatic committee shall consist of three resident male members, and shall have charge of the lake and the boat-house and all boats of the Club. This committee is empowered to formulate all rules relative to the use of the boats and lake; such rules, however, must be approved by the board.

Grounds Committee.

Sec. 8. The grounds committee shall consist of three resident male members, who shall have charge of all the grounds of the Club, except the golf course, tennis courts and lake; it shall have the power to employ such assistance as is necessary to keep up the property under their charge. Their action is subject to the approval of the Board of Governors.

Tennis Committee.

Sec. 9. The tennis committee shall consist of three resident male members, who shall have charge of the tennis grounds; it shall be their duty to keep up the property under their charge. Their actions are subject to the approval of the Board of Governors.

Sec. 10. Any committee is empowered to recommend to the Board of Governors changes, amendments or elaboration of rules relating to or governing them in their duties, as defined by the rules and by-laws.

Article XII.—Change of Residence.

Section 1. Any resident member moving his place of business from _____ County and so continuing it for six consecutive months in any year, upon giving notice in writing of such change to the secretary, and upon the approval of the Board of Governors, may become a nonresident member from the expiration of the month in which such notice was received.

Sec. 2. Any nonresident member may, with the consent of the Board of Governors, become a resident member upon notification in writing to the secretary of his wish to become such, upon paying the secretary the initiation fee.

Leave of Absence.

Sec. 3. Members of the club who expect to be absent from the county for six consecutive months or more may, upon written request to the Board of Governors, be exempt from dues during such absence, at the discretion of the board.

Resignations.

Sec. 4. Resignations may be accepted only as of the last day of the quarter; if not received on or before that date, members will be liable for dues for the succeeding three months.

Article XIII.—Dues.

Section 1. In case any member shall fail to pay dues within thirty days after being requested by the treasurer, a notice of same shall be sent to such delinquent, and if the account remains unpaid at the expiration of twenty days thereafter the secretary shall post such account in the clubhouse, and credit shall then cease. If this default shall continue ten days after the posting of such delinquent this shall work a suspension.

Other Accounts.

Sec. 2. All other bills are due on the first of the month. Credit ceases on the tenth, and members are posted if unpaid by the twentieth. Delinquents are suspended on the thirtieth. Members suspended are not privileged to enter the Club grounds.

Sec. 3. When a member's club bill amounts to \$20 he shall incur no further indebtedness to the Club until such bills are paid in full.

Article XIV.—Betting.

Section 1. Betting or gambling of any kind upon the Club premises is positively forbidden under penalty of suspension for thirty days for the first offense, and expulsion for a repetition.

Article XV.—Visitors.

Section 1. Any member shall have the privilege of introducing as a visitor to the Club any person who is not a resident of -----County, provided that the name and residence of the visitor and the name of the member introducing such visitor and the date of such introduction shall be entered in the visitor's register immediately upon such introduction.

Sec. 2. Upon the request of a member, visitors introduced shall be furnished with a visitor's card, signed by the secretary, certifying that such visitor is entitled to the privileges of the Club for two weeks from the date of issue, with the privilege of one renewal for like period; and no visitor whose invitation has been once renewed shall again be introduced within three months from the expiration of the second period of two weeks.

Sec. 3. Not more than five visitors can enjoy the privileges of the Club at the same time on the introduction of the same member.

Sec. 4. Club members shall be responsible for the conduct and indebtedness of guests introduced by them.

Married Ladies.

Sec. 5. The privileges of the Club shall not be accorded to any man residing in-----Township, or to any married woman residing in-----Township whose husband is not a member of the Club.

Temporary Residents.

Sec. 6. A temporary resident of-----County may be accorded the privileges of the Club on the following conditions; Application shall be made in writing, endorsed by two resident members, and referred to the secretary, who will in turn transmit it to the Board of Governors. If favorable action is taken, applicant will be notified, and must pay in advance \$5 per month for the privileges granted.

Sec. 7. Temporary residents of-----County so endorsed shall not, upon these terms, be extended the privileges of the Club for a period exceeding four months in any one year, and are required to present introduction cards when requested by the custodian of the clubhouse or the greens keeper; Provided, that when such temporary resident has been introduced as a guest by a member, and as such availed himself of guests' privileges, such time shall be computed as part of the four months' maximum period in question.

Article XVI.—Order of Business.

Section 1. At all meetings of the Club, except special meetings, the order of business shall be as follows:

1. Reading of Minutes of last annual meeting and of all special meetings held subsequent thereto.
2. Report of Board of Governors.
3. Report of Secretary.
4. Report of Treasurer.
5. Report of Committees.
6. Unfinished Business.
7. New Business.
8. Elections.
9. Adjournment.

This order of business may be changed at any meeting by a two-thirds vote of the members present.

Article XVII.—Board Meetings.

Section 1. The order of business shall be as follows:

1. Reading of the Minutes of the last regular meeting and of special meetings held subsequent thereto.
2. Reports of Officers.
3. Reports of Standing Committees.
4. Reports of Special Committees.
5. Unfinished Business.
6. New Business.
7. Adjournment.

This order of business may be changed at any meeting by a two-thirds vote of the members present.

Article XVIII.—Election of Members.

Section 1. All candidates for membership shall be proposed by one member and seconded by another and elected by the Board of Governors. Applications must be signed by the applicant. The name and residence of each candidate, with the name of his proposer, shall be inserted in a book kept for that purpose. The name of the candidate, with the names of the proposer and seconder, shall be posted in the clubhouse for two weeks prior to the balloting. No ballot shall be taken upon the name of any candidate until he shall be personally known to at least one member of the board. To elect, at least seven ballots must be cast in favor of the candidate, and in all cases two adverse ballots shall exclude.

Elected candidates must qualify within thirty days from date of their election; otherwise their election is void.

Resignations must be in writing, and must be filed with the secretary before the first day of the quarter, to release the member wishing to resign, from liability for dues for the ensuing quarter.

Ladies shall be eligible for membership upon invitation of the Board of Governors, and upon election shall pay the usual initiation fee and dues.

Club Colors.

Maroon and Green.

SPECIAL CHARTER CLAUSES.

Anti-Tuberculosis Society.

(a) To aid in the treatment of victims of tuberculosis, to aid in the prevention of the spread of tuberculosis, to organize the people of _____ County in the institution, buildings and maintenance of a hospital for the treatment of persons suffering with tuberculosis, to aid in the general education of the people with regard to tuberculosis.

(b) To receive funds in money or gifts of property for the purposes above set out.

(c) To do all these things contemplated in the building and maintenance of a hospital for the prevention, treatment and cure of tuberculosis.

Bank and Trust Company.

The nature of the business to be conducted is to operate a general banking business, including both commercial and savings bank departments; to act as administrator, guardian, trustee, receiver or depository and to take, accept and execute any and such trusts and powers of whatever nature and description which may be conferred upon or entrusted to said corporation by agreement, grant, devise, bequest, assignment, or otherwise, or by order of any court of record, and to take, receive, hold, manage or convey any property or estate, real or personal, which may be the subject of any such trust, and for compensation shall have such commission as may be fixed by law or agreed upon.

Baseball Club.

1. To buy, lease or otherwise acquire land, to erect upon same an athletic park, in which may be held all kinds of athletic games or pastimes; to equip same with proper fence, grandstand, bleachers, clubhouses, etc.

2. To organize a baseball club; to own a franchise in a professional baseball league; to manage and conduct said club; to appoint its officers and contract with the members of said club, and to do all other acts necessary or expedient for this purpose.

Building and Loan.

To enable the subscribers hereto to assist each other, and all who may become associated with them, in making loans to its

members only, and to enable them to acquire real estate, making improvements thereon and removing encumbrances therefrom by the payment of periodical installments, and to accumulate a fund, to be paid by its members, who do not obtain loans for the purpose aforesaid when the funds of said association shall amount to the sum of _____ Dollars per share of the first and subsequent classes or series.

College.

Section 1. That _____, of _____, _____, of _____ etc., trustees, and their successors, be and they are hereby declared to be a body politic and corporate for the purpose of providing for the higher education of women, under the name and style of "_____ Institute, Inc.," and by that name and style they shall have perpetual succession and shall be capable in law to take, receive, hold and purchase all manner of lands, tenements, rents, and annuities, and other hereditaments which at any time may be granted, sold or otherwise conveyed to the said corporation, and shall also be capable in law to take, receive and possess all moneys, goods and chattels that may be given, sold or bequeathed by any person or persons for the use of said corporation, and apply the same according to the will of the donors, all the aforesaid lands, tenements and personal property the said corporation shall have, hold and use to carry out the purposes of the said corporation.

Section 2. That the said corporation shall be capable in law to bargain, sell land and convey to any purchasers, such lands, tenements and hereditaments and personal property which may be owned by said corporation as aforesaid, when the condition of the grant to the said corporation does not forbid the same; and the proceeds arising therefrom shall be held and used for the benefit of the said corporation.

Section 3. That the said corporation shall have power to make and establish such by-laws, rules and regulations for the government of the aforesaid institution as to them may seem necessary: Provided, the same are not in conflict with the constitution and laws of the State of North Carolina and the United States.

Section 4. That the said corporation may sue and be sued, plead and be impleaded in all the courts, and shall have the power aforesaid trustees may think proper.

Sec. 5. That the trustees of said corporation as named in section one of this act shall be divided into three classes, and the

first named of the said trustees shall hold their offices for----- years, and the next shall hold their offices for-----years, and the next named shall hold their offices for-----years, but their successors shall hold their offices for-----years, and be elected as hereinafter provided.

Sec. 6. That said trustees shall have the right to provide for such additional trustees, not more than thirty, as they see fit, and to assign them to the classes. The successors to the trustees named in section one of this charter as well as all other trustees hereafter provided for, and their successors, shall be elected as follows: Two each by the Synod of North Carolina of the----- Church in the United States and two by each----- of said Synod, seven by the officers of the----- Church of-----, of said Synod; Provided, that in case the said Synod, church or any of the----- shall decline or fail to elect the trustees allotted to them then the vacancies occurring in this or any other way shall be filled by the remaining trustees or as they may provide.

Sec. 7. That no person shall be eligible to membership among said trustees unless he is a member of some----- Church of the Synod of North Carolina of the----- Church in the United States or unless if not a member, his election will still leave at least three-fourths of said board of trustees members of said church. That whenever any of said trustees above provided for shall die, resign, remove their residence to another state, refuse to act or shall fail to attend the meetings of said trustees continuously for the space of-----years, the membership of said trustee shall be for the unexpired term.

Sec. 8. That the said trustees shall have the power to remove any one of their number for improper conduct, of which they shall be judges; Provided, the cause thereof shall be entered upon their minutes; and Provided further, that the accused shall have thirty days' notice of procedure, and majority of two-thirds of the members present shall be necessary to effect such removal; and Provided further, that at such trial a majority of the whole board of trustees shall be present.

Sec. 9. The said trustees shall have the power to appoint their own president, secretary, treasurer and committees for such a time as they may deem best, and to elect such professors and tutors and other officers of the aforesaid institution as they shall deem qualified to discharge the duties of their several offices, and

may remove them for misbehavior, inability or neglect of duty or other cause which shall be deemed advisable to said trustees, and do any and all acts usually given trustees of educational, literary, or religious associations.

Sec. 10. Said trustees may also provide for an executive committee of not more than ten members and commit to them the management of the corporation and the institution under its charge and bestow upon them all the powers of the said trustees when the board of trustees is not in session.

Sec. 11. That the faculty of the aforesaid institution by the advice and consent of the aforesaid trustees shall have power to confer all such degrees and marks of literary distinction as are usually conferred by colleges and universities.

Sec. 12. That the said "-----Institute" of-----, N. C., shall be located in or near the City of-----, County of-----, State of North Carolina.

Export and Commission.

To engage in the purchase and sale of cotton and other goods manufactured and otherwise in the several state and territories of the United States and in foreign countries; to advance money upon merchandise, to make, purchase, sell or exchange manufactured or other articles, and to acquire and dispose of the right to make and use the same; to own, hold and lease improved and unimproved real property in any of the states or territories of the United States; to deal in cotton, wool and in cotton and woolen goods, on commission or otherwise; to advance money on consigned, pledged or other goods; and to engage in any wholesale or retail business or any lawful business or purpose pertaining to the manufacture, sale or exporting of cotton or other manufactured or other goods, or to deal in or handle cotton or other goods in any other way.

Fire Insurance.

To insure and re-insure all classes of property against loss or damage, by fire, lightning, water, winds or tornadoes or any other risks assumed by like companies. And for such insurance said corporation may charge such premium or premiums as may be agreed upon between said company and the parties whose property is so insured.

Fishing Club.

To form a social club for the purpose of pleasure to its members and guests and to encourage the raising, cultivation, propagation and protection of fish and game.

Home Lodge.

The said corporation shall have power to lease, purchase, take and receive by deed, gift, or devise and hold in fee simple or lesser estate or estates, all manner of lands, tenements, and hereditaments and shall be capable in law to take, receive and possess all moneys, stocks, bonds, books, goods and chattels which may have been or may hereafter be given to it, or to any person or persons for it, by deed, devise, bequest or otherwise. A misnomer in any deed, will or other conveyance shall not have the effect to invalidate the conveyance if the corporation shall therein be described with sufficient certainty to identify it, or if the intent of the grantor or testator to make the home the beneficiary shall sufficiently appear on the face of the instrument or otherwise. The said corporation, under the direction of the -----Lodge of North Carolina, ----- etc., shall have power to bargain, sell, transfer and convey any and all of its real estate and personal property.

The purpose of said corporation shall be to be build, operate and maintain a home for the ----- etc. and such other ----- as the by-laws shall provide for.

Manufacturing and Trading.

(a) To carry on the business of manufacturing and selling yarns, warps, thread, twine, rope, cloth and fabrics of any or all kinds and materials, which may go into such fabrics, from cotton, wool, linen, flax, hemp, sisal, grass, or any other fibre or material, or any one or more of them, or any mixture or combination of them, or any of them, and to do and perform all things necessary or convenient, or usually done, in connection with such business.

(b) To operate one or more stores for the sale of all kinds of merchandise.

Mercantile.

(a) To do a general mercantile business both wholesale and retail, and buy and sell goods, wares, fertilizers, country produce

and merchandise of every description and buy and sell cotton, cotton seeds and all other farm products, and shall have power to make advancements to those engaged in the cultivation of the soil, and to the others, and to that end shall have power to take mortgages upon real and personal property, and also take chattel mortgages and agricultural liens upon crops and to do all things incident to the mercantile business.

(b) To engage in the business of buying and selling horses, mules and all other kinds of live stock and to do all things incident thereto.

Morris Plan Loan.

(a) To sell, offer for sale and negotiate its own choses in action and to sell, offer for sale, guarantee and negotiate the choses in action of other persons, firms or corporations, as investments, or otherwise.

(b) To receive money or property in payment for said choses in action, in installments or otherwise from any person or persons, with or without an allowance of interest upon such installment; to enter into any lawful contract or undertaking with any person or persons for the withdrawal of such money or property, at any time, with any increase thereof, and make payments to any person or persons of any sum of money at any time, either fixed or uncertain; to make loans at the rate of interest allowed by law and to collect interest in advance, and to make such loans upon such security, real or personal, and upon such terms, conditions and under such contracts, rules, and regulations as the by-laws of the corporation may provide, and, to provide for such premiums and interest and such regulations for the interest on the payment of such loans or other indebtedness as its by-laws may fix and as may, by law, be permitted.

(c) To act as agent, factor or trustee to any person, firm or corporation, upon such terms as to the agency as may be agreed upon, and to hold and dispose of, as agent, or fiscal agent, bonds, certificates of stock, investment, certificates or other evidences of debt; to act as agent for any insurance company or any bonding company authorized to do business in this state, collect the premiums on policies of insurance, and commissions on bonds or bonding companies and generally to do any and all things necessary for the proper conduct of a general insurance, real estate and bonding business.

(d) To acquire by purchase, subscription, or otherwise and to hold as investment or otherwise, any bonds, or other securities or evidence of indebtedness or any shares of capital stock created or issued by it or by any other corporation or association, or by any state, district, territory or county, and to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, or other securities or evidence of indebtedness created or issued by it or by any other corporation or association, or state, district, territory or county.

(e) To make investigations of personal credits and submit reports upon the financial standing of persons, firms, partnerships and corporations, and to make a reasonable charge for the services rendered in obtaining such information and reporting the result of such investigation, which said report shall be rendered under such rules and conditions as may be provided for in the by-laws of the corporation.

Motion Picture and Theater.

To engage in a general entertainment, motion picture and vaudeville theater business, including the buying, selling, renting and handling in any manner whatever any and all items or kinds of equipment, service, and supplies that are in any degree or manner connected with or related to the operation of any kind of entertainment, show or theater, that is to own, lease and manage establishments or enterprises for the purpose of offering and furnishing to the public for compensation, or otherwise, motion picture, vaudeville or any other form of entertainment, or any item or kind of equipment, service or supplies that are in any degree or manner connected with or related to the operation of any kind of entertainment, show or theater, to conduct all, or any such businesses or enterprises upon whatever terms and at whatever rates the company wishes, with a right and power to act either as an agent or as a principal, with the authority to buy and sell anything whatever and with the privilege of conducting business in -----and any other city or cities whatever.

Pine Lumber Association.

(a) To foster relations of friendship and cordiality, promote welfare and prosperity, obtain and disseminate information, reform abuses, promote uniform and advantageous methods, obtain friendly settlements, adopt expedient rules and regulations, and

secure the advantage of united action, plans and procedure, to, for, through, by, among and between its members.

(b) This corporation shall be managed by a board of directors, which shall consist of twelve (12) members, which shall be chosen at the meeting hereafter called for organization. The number of directors may hereafter be increased or decreased by a majority vote of the members of this association, at any regular or at any special meeting called for that purpose. The directors shall choose the following officers: A president, three (3) vice presidents, a secretary and a treasurer, which two last offices may be combined and filled by one person, if the board of directors shall so desire. The number of vice presidents may hereafter be increased or decreased at any time by a majority vote of the board of directors. The directors shall have the right to enact, repeal or amend any by-law, unless such by-law shall contain a provision exempting it from amendment, repeal or change by the board of directors, in which event such by-law shall be amended only by a majority vote of the corporation.

Real Estate, Loan and Insurance Agency.

To take, acquire, buy, hold, own, maintain, work, develop, sell, convey, lease, mortgage, exchange, improve, and otherwise deal in and dispose of real estate and real property or any other interests and rights therein, without limit as to amount; to take, acquire, buy, hold, own, sell, hire, lease, mortgage, pledge and otherwise deal in and dispose of all kinds of property, chattels and chattels real, without limit as to amount; to lend money on bonds, secured by mortgage on real estate or upon personal property, or to guarantee the payment of principal and interest of any bonds or notes secured by mortgages on real estate or personal property, or to lend money and make advances from time to time on bonds secured by mortgages for future advances on real estate or upon personal property; to procure money for borrowers and to guarantee to the lender the payment of both principal and interest and to charge therefor a commission for its services; to act as agents for insurance companies; to erect, construct, alter, maintain, to improve existing houses, buildings or works of every kind on any lands of the corporation, or upon any other lands, and to rebuild, alter, improve existing houses, buildings and works thereon; to convert and appropriate any such lands into and build and form roads, streets or any other conveniences, and generally to deal with and improve the property, of the corporation, to under-

take and direct all estates, property, buildings and lands, as the agent of the owner of such estates, property, buildings and lands, and to collect the rents as the agent of the owner of such estates, property, buildings and lands, charging for such services such commission as may be agreed upon, to transact on commission the general business of a real estate agent, to hold, purchase or otherwise acquire, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock and bonds, debentures or any evidence of indebtedness created by other corporation or corporations, and allow the holder thereof to exercise all the rights and privileges of ownership and right to vote thereon; to guarantee the payment of dividends or interest on any shares, stocks, debentures or other securities, contracts, or obligations issued by any other corporation; to lend and advance money, to give credit to any person or corporation on such terms as are not inconsistent with the laws of this state as may seem expedient; to give, guarantee, or become security for any such persons or corporations; to do all and everything necessary, suitable, convenient or proper for the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated incidental to the powers named or which shall at any time appear conducive or expedient for the protection or benefit of the corporation, either as holder of or interested in any property or otherwise, with all the powers now or hereafter conferred by the laws of North Carolina upon corporations, to act as warehouseman, broker and commission merchant, but nothing herein set forth is to be construed to authorize the formation hereby of any insurance, banking corporation or savings bank, or corporation deemed to possess any of the powers prohibited to corporations formed under the statutory provisions of the State of North Carolina.

Social Club.

To conduct and maintain a social club for the amusement and recreation of its members, to promote social intercourse among the-----Club, and to provide rooms in which they can meet for recreation, amusement and social intercourse.

Tobacco Association.

- (a) To regulate and govern the sale of leaf tobacco on the
-----tobacco market.

(b) To regulate and govern the business of buying, drumming and guaranteeing leaf tobacco in the country surrounding the _____ tobacco market.

Waterworks.

To install and operate a system of waterworks and sewerage, and to do and perform such other kinds or classes of business, as are permitted under the corporation laws of North Carolina, with all the rights and powers incident thereto.

Woman's Club.

To bring the women's clubs, and other organizations of women throughout North Carolina into relations of mutual helpfulness and co-operation.

CERTIFICATE OF AMENDMENT TO THE CHARTER

of

The _____ Company

The location of the principal office in this state is at No. _____ street, in the _____ of _____ County _____

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is _____

Resolution of Directors.

The board of directors of the _____ company, a corporation of North Carolina, on this _____ day of _____, A. D. 192____, do hereby resolve and declare that it is advisable that _____

_____ and they do hereby call a meeting of the stockholders, to be held at the company's office in the City of _____, on _____ the _____ day of _____, 192____, at _____ M., to take action upon the above resolution.

Certificate of Change.

The _____ Company, a corporation of North Carolina, doth hereby certify that it has

In witness whereof, said corporation has caused this certificate to be signed by its President and Secretary, and its corporate seal to be hereto affixed, the _____ day of _____, A. D. 192____.

COMPANY

Attest: _____
Secretary.

STATE OF _____ }
COUNTY OF _____ }

And he further says that the assent hereto appended is signed by at least two-thirds in interest of each class of the stockholders

Notary Public.

We, the subscribers, being at least two-thirds in interest of each class of stockholders of the-----
Company having voting powers, having at a meeting regularly called for the purpose voted in favor of-----

Witness our hands, this _____ day of _____
A. D. 192____.

No. of Shares.

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vote being taken, such stockholder so to be excluded shall be notified of such action by a letter mailed to him in the post office at Raleigh, N. C., properly stamped and registered, and addressed to his post office as disclosed by the stock books. That thirty (30) days after the posting of such letter, the person so excluded shall cease to be a member or stockholder of said corporation, and shall no longer have any right or interest therein, except that he may, at any time, within twelve (12) months from the time he was so excluded, have the right to demand and receive from the corporation the par value only of all shares of stock in this corporation owned by him. If he shall not apply for the same within said period of twelve (12) months, he shall lose all right to demand the par value of his stock.

“And for the purpose of defraying the expenses and preserving order in the corporation, the corporation, through its Board of Governors or stockholders, shall have the right to impose and collect from each stockholder dues or contributions, not to exceed, however, the sum of twelve (\$12.00) dollars per annum, and to prescribe all needful rules and regulations for the government of the property of the corporation, and the conduct of its members while dealing with or using the property of the corporation; and the said corporation, through its said Board of Governors or stockholders, may prescribe forfeitures, pains and penalties for the violation of any of its rules, and methods for the enforcement thereof, and may provide for the exclusion of stockholders violating such rules and regulations, in which case the procedure and redemption of stock shall be in the manner hereinbefore provided. That any person becoming a stockholder of the corporation shall be conclusively presumed to have accepted and agreed to all the terms and conditions set out in this amendment to the charter or certificate of incorporation.

“That all certificates of stock of this corporation now outstanding shall be called in within thirty (30) days from this date and exchanged for new certificates of stock; and the said new certificates of stock shall contain a succinct statement of the material parts of this amendment; and all certificates of stock hereafter issued shall contain the same statement, so that all stockholders of the corporation shall be charged with notice of the terms of this amendment and shall be bound by its conditions.

“That no holder of any certificate of stock shall be entitled to any of the privileges of the corporation or enjoy any of its bene-

fits, or use any of its property until his application for membership in the corporation, based upon his ownership of a certificate of stock, shall have been passed upon and approved by at least a two-thirds vote of the Board of Governors.

CERTIFICATES OF STOCK.

Every shareholder is entitled to a certificate signed in the name of the corporation by its president or by a vice-president, attested by the secretary, with the corporate seal thereon, showing the number of shares owned by such shareholder. No particular form of words is necessary to the validity of the certificate. It may be, by its terms, made dependent for validity upon certification by the Registrar or Transfer Agent, or these clauses must be omitted, if there be no registrar or transfer agent.

If Preferred Stock be issued, its terms should be set out in the certificate of common stock; and it should be made clear, that after the payment of all dividends on the preferred stock, all earnings shall belong to the holders of the common stock; and that upon dissolution of the corporation after the preferred stock and all accrued and unpaid dividends shall have been paid, all the remaining assets shall belong to the holders of the common stock.

The following is a simple and usually sufficient form for certificate of stock, when there is no preferred stock and when there be neither registrar nor transfer agent:

----- Shares	----- Shares
No. -----	Par Value \$100.00
Incorporated under the laws of North Carolina, 192----	
-----COMPANY (or INCORPORATED)	
THIS IS TO CERTIFY that-----is the owner of	
-----fully paid and non-assessable shares of the par	
value of one hundred (\$100.00) Dollars each in the capital stock	
of-----Company, transferable only in per-	
son or by agent or attorney upon the books of said company	
upon surrender of this certificate.	

WITNESS the signatures of the President or of a Vice-President and of the Treasurer or an Assistant Treasurer.

Treasurer or Asst. Treasurer
(Corporate Seal).

President or Vice-President

If shares of no par value be issued, the form should be changed by striking out the words "Par Value \$100.00" and inserting in lieu thereof the words "without par value". See charter and certificate of stock of Pacific Oil Co. Pages 509 and 516.

Certificates of stock—common and preferred—in corporations of various kinds, are here given.

Incorporated Under The Laws of North Carolina 19_____.

Total Authorized Capital Stock \$100,000.

Par Value \$100.

Fully Paid Up, Non-Taxable and Non-Assessable.

No. _____ Shares.
 _____ CORPORATION
 _____, North Carolina.

THIS IS TO CERTIFY That _____
 is the owner of _____ Shares of the par value of One
 Hundred Dollars (\$100.) each of the Capital Stock of _____
 _____ CORPORATION (hereinafter called the Corporation),
 fully paid up, non-taxable and non-assessable, transferable only
 on the books of the Corporation by the holder hereof, in person
 or by attorney, upon surrender of this certificate properly en-
 dorsed.

The Corporation shall, at all times, have a first lien upon the
 shares of stock held by any of its stockholders for any and all
 indebtedness of such stockholder to the Corporation. Any sale
 of stock of this Corporation shall be invalid unless and until all
 indebtedness of the owner of such stock to this Corporation shall
 have been fully paid and discharged. No stockholder shall have
 the right to sell his or her stock to any person not a stockholder
 in this Corporation until he, or she, shall have first given a
 written notice to the Corporation, at least thirty (30) days previ-
 ous to the date of sale, of the purpose to sell said share, or shares,
 of stock, and the price per share of the same; and during the said
 period of thirty days any stockholder of this Corporation shall
 have the right to purchase all or any part of the stock so offered
 at the price named in said notice; and any sale to a person not a
 stockholder at a price lower than that named in said notice shall
 be invalid.

The incorporators shall have the right to inspect the books of
 this Corporation at all times while they shall remain stockholders

hereof; but no person buying stock of the Corporation shall have the right to examine the books of the Corporation until after he, or she, shall have been a stockholder of record for at least one (1) month.

Each share of the Capital Stock of this Corporation shall be entitled to one vote in all stockholders' meetings.

IN WITNESS WHEREOF the Corporation has caused its name to be signed hereto by its President and its corporate seal hereto affixed and attested by its Secretary, this the----- day of-----, A. D. 19-----.

-----CORPORATION,

By-----,

(Seal)

President.

ATTEST:

Secretary.

Assignment of Certificate of Stock.

For value received,-----hereby sell, assign and transfer unto-----Shares of the Capital Stock of----- CORPORATION represented by the within certificate, and do hereby irrevocably constitute and appoint-----attorney to transfer the said stock on the books of the within-named Corporation, with full power of substitution in the premises.

Dated-----day of-----, A. D. 19-----.

In the presence of:

(Seal)

100 Shares

Common Capital Stock

100 Shares

No.-----

Incorporated under the laws of the State of New Jersey

-----Steel Corporation.

THIS IS TO CERTIFY that-----is the owner of one hundred fully paid and non-assessable shares of the par value of one hundred dollars each in the common capital stock of-----Steel Corporation, transferable only in person or by attorney upon the books of said Corporation, upon surren-

der of this certificate. The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the Corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative and shall be payable before any dividend on the common stock shall be paid or set apart, so that if in any year dividends amounting to seven per cent shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly installment for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years and such accrued quarterly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits. In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the Corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock, and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares. The preferred stock and the common stock may be increased as provided in the Certificate of Incorporation. This certificate is not valid without the signatures of the Transfer Agent and Registrar of Transfers.

WITNESS the signatures of the President or of a Vice-President, and of the Treasurer or of an Assistant Treasurer, of said Corporation.

Asst. Treasurer

Vice-President.

Preferred Stock.

Incorporated Under the Laws of North Carolina 19-----
-----Company.

Number-----Shares.

FULLY PAID, NON-TAXABLE AND NON-ASSESSABLE.

Total Authorized Capital Stock \$50,000.

Total Authorized	Total Authorized
Preferred Stock \$10,000.	Common Stock \$40,000.

Shares \$100 Each.

THIS IS TO CERTIFY that-----is the owner of
-----shares of the par value of \$100 each of the PRE-
FERRED capital stock of----- COMPANY (herein-
after called the "company"), fully paid up and non-assessable,
transferable only on the books of the company by the holder
hereof, in person or by attorney, upon surrender of this certificate
properly endorsed. The registered holders of the preferred capi-
tal stock, amounting to \$10,000 shall be entitled to receive, and
this company shall be bound to pay, a fixed annual dividend of ten
per cent (10%), cumulative, to date from -----, 19--, and
payable as follows: one full year's payment on -----,
19--, and thereafter payable in four equal quarterly installments
of two and a half per cent ($2\frac{1}{2}$) each, on the first days of Octo-
ber, January, April and July of each and every year so long as
the said preferred stock, or any part thereof, shall be outstand-
ing, out of the earnings of the company, and to be paid in divi-
dends in that year before any dividends can, or shall, be paid
upon the common stock. If in any year all of the said dividends
upon the preferred stock shall not be fully paid, then the amount
thereof unpaid shall be and remain a charge, bearing six per
cent interest per annum from the date it should have been paid,
upon the net earnings of future years, to be paid before any
dividends can, or shall, be declared or paid upon the common
stock. And in the final dissolution of the company, or in the
final distribution of its assets the said preferred stock shall be
paid at par, together with all arrearages of unpaid dividends and
interest, which may be due thereon, before any distribution shall
be made to the holders of the common stock. All of the net earn-
ings of the company, to be declared as dividends in any year,
after all dividends shall have been paid as aforesaid upon the
preferred stock, together with all arrearages on same and inter-

est, shall belong entirely to the holders of the common stock. And in the final dissolution of the company or in the final distribution of its assets, after payment of all its debts, the holders of the said preferred stock shall be entitled to receive the par value of their shares, together with all unpaid dividends and arrearages and interest on same. The balance shall belong to, and be distributed ratably, among the holders of the common stock. Each share of the capital stock, whether preferred or common, shall be entitled to one vote in all stockholders' meetings.

And for the purpose of securing and safeguarding the interests of all present and future owners of preferred stock the company makes and enters into the following special agreements and stipulations, which shall be irrevocable without the unanimous consent of all the holders of said preferred stock, which said agreements and stipulations shall be considered as part of the consideration moving to the purchasers of the same. That is to say, the company agrees:

1. That it will not place any mortgage or deed of trust upon any of its property, so long as this preferred stock, or any part thereof, remains outstanding; but it may buy property with the title reserved by the seller until paid for.

2. That it will not increase the total issue of preferred stock above or beyond the sum of Ten Thousand Dollars.

3. That all proceeds received by it, arising from the sale of said preferred stock, shall be expended in improvements and betterments at the amusement park, which this company will lease from _____ Power & Light Company, and operate about four miles north of the City of _____.

4. That it will redeem at par, on or before the 1st day of _____, 19____, the entire issue of preferred stock; and the holders of said preferred stock shall have the right, at that date, to demand the redemption of the same at par.

5. That it will pay all taxes upon its property, so that its stock shall be non-taxable in the hands of the holders thereof, and will carry a reasonable amount of fire insurance upon its buildings.

And the company reserves the right to call in and redeem any one or more or all of the shares of the said preferred stock at any period prescribed for the payment of dividends by paying par therefor, plus all dividends in arrears with interest thereon, and a quarterly dividend of two and a half per cent as a premium or bonus to the holder thereof. And the company reserves the right to select such share or shares for redemption by lot or otherwise,

as it may deem proper, and give the registered holder of such stock notice of its call for redemption at least twenty (20) days prior to the date of its redemption.

WITNESS the seal of said company and the signatures of its president and secretary, this the-----day of-----, 19-----.

President.

Secretary.

NOTE. If the preferred stock possesses voting privileges, no stock having preference over the preferred stock can be issued without a vote of the preferred stock already authorized and issued. But if the preferred stock has not voting privileges, an issue of "prior preferred stock" may possibly be authorized by a vote of the common stock only and without the consent or even the knowledge of the holders of the preferred stock theretofore issued. Persons owning preferred stock and persons contemplating its purchase should ascertain what protection is provided against an issue of "prior preferred stock."

Incorporated under the Laws of the State of North Carolina.

-----MANUFACTURING COMPANY

-----N. C.

No.----- CAPITAL STOCK \$750,000.00 Shares-----

THIS CERTIFIES, That-----is entitled to -----shares of the fully paid and non-assessable Preferred Cumulative Stock of the-----Manufacturing Company of-----, North Carolina, transferable only on the books of the corporation, in person or by duly authorized attorney and by the surrender of this certificate properly endorsed.

It is mutually agreed between the holder hereof and the-----Manufacturing Company and its Stockholders as follows: That this certificate of stock is a part of an issue amounting in all to Two Hundred Fifty Thousand Dollars, par value, authorized by an amendment to the Certificate of Incorporation of the-----Manufacturing Company, filed in the office of the Secretary of State of the State of North Carolina on-----, 19-----. This certificate of stock is issued subject to the terms and conditions therein set forth, which are made a part of this contract.

The holders of this Preferred Stock of the Corporation are entitled, as provided in its amended charter, to receive out of its

net profits, cumulative dividends at the rate of seven per centum per annum, payable annually before any dividend shall be paid to the holders of Common Stock, and on dissolution of the corporation or distribution of its assets, are also entitled before any amount shall be paid to the holders of Common Stock, to be paid the par value of their stock and all unpaid cumulative dividends thereon at the rate aforesaid. The Preferred Stock shall have the same voting power as the Common Stock.

The Preferred Stock in whole or in part may, at the option of the Corporation, after five years from the date of issue, at the time of paying any annual dividend, be retired by the corporation at par, upon three months' notice in writing, by paying the owner thereof the par value together with any dividends thereon.

IN WITNESS WHEREOF the President and Treasurer of the Corporation have hereunto set their hands and caused the Corporate Seal to be hereto affixed at _____, North Carolina, this the _____ day of _____ 19____.

Vice-President.

Treasurer.

No. _____

Shares _____

_____ MARINE COMPANY.

Incorporated under the Laws of the State of
New Jersey

THIS CERTIFIES that _____
is the owner of _____ fully paid and non-assess-
able shares of the par value of one hundred dollars
each in the 6% Cumulative Preferred Capital Stock
of _____ Marine Company,
transferable in person or by attorney upon the books
of said company upon surrender of this certificate
properly endorsed. The holders of the preferred
stock shall be entitled to receive, when and as de-
clared, from the surplus or net profits of the com-
pany, yearly dividend for each year subsequent to
December 1st, 1902, at the rate of six per centum per
annum, and no more, payable semi-annually on dates
to be fixed by the by-laws. The dividends on the
preferred stock shall be cumulative, and shall be
payable before any dividend on the common stock
shall be paid or set apart, so that, if in any year, divi-

dends amounting to six per centum shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued semi-annual installment for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years and such accrued semi-annual installment, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock payable then or thereafter, out of any remaining surplus or net profits; Provided, however, that the dividends upon the common stock shall be so limited that the same shall never in any one year exceed the rate of ten per centum so long as there shall remain outstanding and unredeemed any of the Four and One-half Per Cent Mortgage and Collateral Trust Gold Bonds of the company. In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the company, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock, but after the payment to the holders of the preferred stock of its par value and the unpaid accrued dividends thereon the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares. The holders of preferred stock and of common stock have equal voting powers. This certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

WITNESS the signatures of the duly authorized officers of said company.

Asst. Treasurer.

Vice President.

REGISTERED
By _____
192
TRUST COMPANY
Registrar

Asst. Secretary.

Transfer Agent.

COUNTERSIGNED
192
COMPANY

Incorporated under the laws of the State of North Carolina.

Charter amended, 19_____.

No. _____

Shares_____

Fully Paid

Non-Taxable

Non-Assessable

-----CLUB, INC.

Raleigh, N. C.

Total Authorized Capital Stock, \$25,000.00

THIS IS TO CERTIFY, that_____ is the owner of_____ shares of the par value of \$100.00 each of the capital stock of_____ Club, Inc., Raleigh, N. C. (hereinafter called the Corporation), fully paid, non-taxable, and non-assessable, transferable only on the books of the corporation by the holder hereof in person or by attorney upon surrender of this certificate properly endorsed. The stock represented by this certificate shall not be entitled to any dividends; but in the final dissolution of the corporation, or in the final distribution of its assets, the said assets of the corporation shall be distributed ratably among the holders of the stock of the corporation.

-----Club, Inc., shall have the right, by two-thirds vote of all of its Board of Governors, or by two-thirds vote of its stockholders, after ten (10) days notice to such stockholder or member, to declare any stockholder or member, who may have become uncongenial to other stockholders or members no longer a member of the corporation; and notice of such action shall be given to the stockholder so to be excluded by a letter mailed to him in the postoffice at Raleigh, N. C., properly stamped and registered, and addressed to his postoffice as disclosed by the stock books. Thirty days after the deposit in the postoffice at Raleigh, N. C., of such notice, the said stockholder shall cease to be a stockholder or member, and shall no longer have any right or interest therein, except that he may, at any time, within twelve months from the time he was so excluded have the right to demand and receive from the corporation the par value only of his stock. If he shall not apply for the same within said twelve months, he shall lose all right to demand the same. The Board of Governors shall have the right to prescribe all needful rules and regulations for the government of the property of the corporation, and the conduct of its members; and

the said corporation, through its Board of Governors or stockholders, may prescribe forfeitures, pains and penalties for the violation of any of its rules; and methods for the enforcement thereof; and may provide for the exclusion of stockholders violating such rules and regulations, in which case the procedure and redemption of stock shall be in the manner hereinbefore provided. That any person becoming a stockholder of the corporation shall be conclusively presumed to have accepted and agreed to all of the terms and conditions set out in the charter or certificate of incorporation, and the amendment thereto. That no holder of this certificate of stock shall be entitled to any of the privileges of the corporation until his application for membership in the corporation, based on his ownership of this certificate of stock, shall have been passed upon and approved by at least a two-thirds vote of the Board of Governors. Each stockholder may be required to pay annual dues or contributions for the purpose of defraying the expenses of the corporation; not to exceed, however, the sum of Twelve (\$12.00) Dollars per annum; and each stockholder agrees to pay such dues or contributions.

WITNESS: The seal of the corporation, and the signatures of its president and secretary and treasurer, this-----day of ----- A. D. 19-----

ATTEST:

Secretary and Treasurer.

President.

(Usual Form of Assignment on Reverse Side.)

PROCEEDINGS IN ORGANIZATION OF LARGE CORPORATION WITH LONG FORM OF BY-LAWS, ETC.

First Meeting of the Incorporators of

-----Street,

-----day of-----, 19-----,
-----o'clock-----M.

BE IT REMEMBERED THAT:

This being the time and place before designated for holding the first meeting of the incorporators of-----

for the purpose of perfecting the organization of the corporation, the following incorporators were present in person:

Messrs. _____

these being all of the incorporators named in the certificate of incorporation.

Mr. _____ acted as President, and
 Mr. _____ as Secretary. The President called the meeting to order; and upon a roll call, it was ascertained that all of the incorporators were present in person, to wit, Messrs. _____

The Secretary read the waiver of notice of this meeting, duly signed by all of the incorporators; a copy of which was ordered spread upon the minutes, and the original filed with the Secretary. The following is a copy of the waiver of notice:

Waiver of Notice of First Meeting of the Incorporators

of

_____ COMPANY

We, the undersigned, being all of the incorporators and subscribers to the capital stock, and all of the parties named in the certificate of incorporation of _____ Company, a corporation created under the laws of the State of North Carolina, do hereby waive notice of the time, place, and purpose of the first meeting of the incorporators of said corporation, and do hereby fix _____ o'clock _____ M., on the _____ day of _____, 19____, as the time, and _____, in the City of _____ as the place for holding the first meeting of the incorporators and subscribers to the stock of said corporation; and we agree that at said meeting the organization of said corporation may be perfected, and that any such other matters as may be of interest to the company may be considered.

And we do hereby waive all the requirements of the statutes of the State of North Carolina, as to the notice of this meeting, its time of service, and publication thereof; and we agree to be present and consent to the transaction of such business as may come before said meeting.

Witness our hands, this _____ day of _____, _____

Witness:

The President announced that all of the incorporators being present, the meeting was ready for the transaction of business.

The President presented a copy of the certificate of incorporation of the Company, which had been filed with the Secretary of State; and the same was read in full.

On motion of Mr. _____, seconded by Mr. _____, it was ordered that the certificate of incorporation be accepted; that a certified copy of the same be filed in the office of the Clerk of the Superior Court of _____ County, and that a copy be spread upon the minutes of this meeting.

The following is a copy of the certificate of incorporation:

(Here should be inserted copy of certificate of incorporation.)

On motion of Mr. _____, seconded by Mr. _____, it was ordered that the capital stock of this company for the present be placed at the sum of _____ dollars, divided into _____ shares, each of the par value of _____ (\$ _____); and that the same be offered to subscribers at par, and to be paid for by the subscribers as called for by the Directors, the corporation reserving a lien upon all subscriptions for partial payment of stock, with the right, in case of default, to sell the said stock and pay the subscriptions which should then be in arrears.

(If no preferred stock be issued, omit all reference thereto)

It was further ordered that of said stock _____ dollars, divided into _____ shares, each of the par value of _____ (\$ _____) dollars be preferred stock; and that said preferred stock shall be a first lien upon the profits of the company as to dividends, and all arrears thereof; and upon the property of the company in redemption of stock upon dissolution, voluntary or otherwise of the company.

That said preferred stock shall be entitled to a preferential dividend of _____ (_____%) per cent per annum, payable _____ annually, on the _____ days of _____ and _____, in each and every year, out of the surplus earnings of the company before any dividend shall be declared or paid upon the common stock. And, if in any year, the earnings of the company shall not be sufficient to enable it to pay dividends on the preferred stock then all such unpaid dividends shall be and remain a charge against the future earnings of the company, together with six per cent (6%) interest thereon from the time they should have been paid to the holders of the said preferred stock. And all arrears of unpaid dividends, and interest thereon shall be paid from the future surplus earnings of the company, before any dividend shall be declared or paid upon the common stock.

That in any dissolution, whether voluntary or otherwise of this company, the holders of the preferred stock shall be entitled to have their stock redeemed, paid for and retired at par, plus any accrued and unpaid dividends, with interest thereon as aforesaid; and the holders of the common stock shall not be entitled to any dividends from the assets of the company, in a dissolution of the same as aforesaid, until all of the preferred stock, with all accrued and unpaid dividends, with interest thereof, shall have been redeemed, paid off, and retired as aforesaid.

The holders of the preferred stock shall (or shall not) be entitled to a vote in the stockholders' meetings for each share of preferred stock held by them.

After all dividends on the preferred stock shall have been fully paid as aforesaid, the remainder of the earnings of the company shall belong to the holders of the common stock; and in any dissolution of the company, all the property of the company, after the payment of its debts, and the redemption and retirement of the preferred stock as aforesaid, together with any unpaid dividends and interest thereon, shall belong to the holders of the common stock.

The said preferred stock may be, by the directors, called in for redemption at any dividend date by giving the holders of the same notice in writing, not less than thirty (30) days prior to the date of redemption, upon paying the par value of the stock, plus any unpaid dividends and interest on any in arrears, together

with the sum of two per cent of the par value of said stock bonus. And the directors shall have the right to call in and redeem any one or more shares of said preferred stock and may select the share or shares to be redeemed by lot or otherwise as they may see proper. A notice of the purpose to redeem said stock mailed to the owner of the share or shares to be redeemed, as disclosed by the stock books, and mailed in the postoffice at-----

-----, properly stamped and addressed, not less than thirty (30) days prior to the date of redemption, shall be a sufficient notice to the holder or holders of such stock of the purpose to redeem. And if said stock shall not be presented at the office of this company on the date named for its redemption, dividends shall cease thereon from such date.

(If no-par stock be issued, proper reference should be made thereto. See page 508 for form.)

The following shall be the form of the certificates of preferred stock:

(Here should be inserted form of certificate of preferred stock.)

(If no preferred stock be issued, strike out the word "common.")

The following shall be the form of the certificates of common stock:

(Here should be inserted form of certificate of common stock).

The following shall be the form of the certificate of no-par stock.

(Here should be inserted form of no-par stock).

All certificates of stock shall have printed thereon forms for assignment.

(If no preferred stock be issued, strike out the words "preferred and common" in next line.)

Said certificates of preferred and common stock, when signed in the name of the company, by its President, and attested by its Secretary and Treasurer, with the corporate seal of the company affixed thereto, shall be valid and binding obligation of this company; and the holders of said stock shall not be required or charged with the duty of seeing to the application of the funds arising from the sale thereof; and all the agreements, stipulations, and conditions contained in the said certificates of stock are hereby declared to be contracts, agreements, stipulations and undertakings of, and binding in all respects upon this company, according to the tenor of said certificates of stock.

Mr. _____ moved that subscriptions to the stock of the company be now invited and received. Mr. _____ seconded the motion; and on being put to a vote the same received a unanimous vote and was declared carried.

Whereupon applications for stock were presented by the following persons, for the number of shares set opposite their respective names:

Mr. _____, _____ Shares.
 Mr. _____, _____ Shares.

Which applications for stock, duly signed by the applicants, and preserved by the Treasurer, were in substance in the form following, to wit:

_____, 19____.

For value received we do each severally, but not jointly, hereby subscribe for the number of shares of the _____ capital stock of _____ set down on the line in front of the names of each of us; each share to be of the par value of One Hundred (\$100.00) Dollars. We severally, but not jointly, agree to pay the par value of each share of said stock into the treasury of the company as called for by the company or by its directors.

It is understood and agreed as a part of this subscription blank that the signers hereto are not sureties for each other; and that no one is liable on this subscription list for the payment of anything more than the amount of stock set down in front of his name; and no one shall be liable under this subscription blank for any other or further sum. Several persons sign said subscription blank merely for the purpose of convenience and not to guarantee the payment of each other's subscriptions.

The subscriptions made by each one of us as aforesaid are absolute and unconditioned, and not dependent upon any contingency whatsoever.

We agree hereby to waive, and do hereby waive, all notices required by law to be given, and all notices which are usually given to subscribers to stock of incorporated companies; and we agree to participate in the meeting now being held without other or further notice. We consent to and ratify all which has heretofore been done in said meeting; and we will participate in the

further proceedings of this meeting to all intents and purposes as fully as if we had affixed our names to the certificate of incorporation.

Witness our several hands and seals, this the day and year aforesaid.

No. of Shares of Stock
Subscribed for

Names of Persons
Subscribing for Same.

----- (Seal)
----- (Seal)

Witness:

Whereupon Mr. ----- moved that all of said subscribers be invited to come into and participate in this meeting. Mr. ----- seconded the motion, and the same was carried.

The President thereupon invited all of said subscribers to come into the meeting and take part therein; and declared that they were to all intents and purposes subscribers to said capital stock to the same intent and purpose and as truly as if they had signed the certificate of incorporation of this company; and the said gentlemen participated in the further proceedings of this meeting.

Upon motion of Mr. -----, duly seconded by Mr. ----- it was ordered that the seal of the corporation be a device circular in form, with the words:

-----, N. C., SEAL, INCORPORATED,
-----"; and that an impression be made from said device upon this page.

Whereupon the Acting Secretary in open meeting, and in the presence of all incorporators and subscribers to the stock of this company, made upon this page, and from said seal, the impression here immediately following:

(Impression of Seal.)

Upon motion of Mr. -----, seconded by Mr. -----, the following were adopted as the by-laws of the company, after having been read, considered, discussed, and voted upon section by section:

BY-LAWS OF _____COMPANY

Article I.**Purposes of Company and Certain General Regulations and Restrictions.**

Section 1. The company belongs to its stockholders and its purpose is to make profits for them. The assets of the company are in the nature of a trust fund, applicable first to debts, and then to stockholders. Officers owe high allegiance to stockholders and must be mindful of their duties to the stockholders. If they cannot earn profits, they should not continue in office. They owe to the stockholders a duty to be frank and to give full information; and it shall be their duty to warn stockholders of impending dangers and losses.

Sec. 2. Directors and officers shall be nominally elected for terms of one year, and until their successors shall have been elected and have qualified. But any employee or officer of this company may be discharged at any time during his term of office by a vote of two-thirds of all the directors or by a vote of two-thirds of all the stockholders at any regular, special, or adjourned meeting of directors or stockholders, and any director may be discharged by a vote of two-thirds of all the stockholders. All directors, officers, and employees in accepting office or employment shall be understood to agree that they may be dismissed in this manner; and the by-laws hereinafter treating of the terms of directors, officers, and employees, shall be construed in accordance herewith. When a director, officer, or employee shall be discharged in the manner prescribed herein, he shall have no power or authority under or by virtue of his former office or employment, and no claim for services after the date of his discharge. The attention of all directors, officers, and employees, now or hereafter, is invited to this by-law.

Sec. 3. No director, officer, or employee shall be entitled, directly or indirectly, to any compensation for services rendered to this company, except such as shall be voted by directors prior to the performance of the service. And no director, officer, or employee shall be permitted to accept pay or compensation in any manner or form from any outsider or person with whom this company has dealings for services rendered this company. Directors, officers, and employees buying or selling for this company shall obtain the best prices possible, including discounts, extras, or any-

thing of value, all of which shall be for the benefit of this company.

Any such director, officer, or employee taking to himself, directly or indirectly, or having given to any other person, any discount, "rake-off," gift, benefit, or advantage shall be discharged and required to pay the value of such thing retained by him or withheld from this company the full value thereof with interest.

Sec. 4475, Consolidated Statutes, makes the conduct forbidden by this section a crime, punishable in the discretion of the Court.

Sec. 4. All contracts, and especially all contracts for the future sale or purchase of any material or commodity shall be taken in the name of the company and promptly entered upon the books. And no contract of this company shall be made or taken in the name of any person whomsoever.

Sec. 5. Whenever the profits of the company shall, in the opinion of the board of directors, justify such action, it shall be the duty of the directors to pay dividends on the stock. And the directors shall constantly bear in mind that the company belongs to the stockholders and that the purpose of the company is to make and pay dividends to the stockholders.

Sec. 6. If, at any time, the directors should become convinced that the company cannot expect to make a profit, and that loss by continued operations cannot be avoided, it shall be their duty to call a special meeting of the stockholders "for the purpose of considering matters of importance"; and, at such meeting, frankly and fully set forth the situation with such suggestions as they may deem proper.

Sec. 7. This company desires at all times to carry reasonable insurance protection, fire, employers' liability, etc., but such insurance should be based upon the necessities of the company, and the character and amount are matters which deserve, and should have, the careful consideration of officers and directors; and they should understand the kind of insurance taken, and especially the conditions which said policies should contain, limiting the insurer's liability or exempting it from liability. No policy of fire insurance containing the "Co-insurance" or "Iron Safe" clauses shall be accepted until and unless the board of directors shall have by resolution approved the same.

Notice shall be given of all losses covered by fire or employer's liability policies immediately, whether such losses be small or not.

In applications for fire insurance all property incapable of destruction by fire, such as detached smokestacks, foundations of buildings and other like property shall be excepted (and the exceptions stated in the application and policy). There is no necessity of wasting insurance on such property; but the full force of all policies should be preserved for that property which may be destroyed or materially injured by fire.

Sec. 8. It shall be the duty of the officers of this company charged with keeping its books and records, to see that the same are so kept that if, at any time, an act of the company or the expenditure of its money be questioned or challenged, the books shall show whether such act or expenditure of money was authorized or unauthorized; and also so keep the books of the company that if sudden death should overtake the officer keeping the same, his successor would have no trouble in understanding from the books the situation of the company and the status of its affairs.

Any system of bookkeeping which will not comply with the foregoing two requirements shall be deemed insufficient and inadequate.

The books of this company must contain a complete history of the company from organization to dissolution and must be self-explanatory.

The minutes of all stockholders' and directors' meetings shall be signed by the President, or the person acting as president, and by the Secretary.

Sec. 9. No contribution shall be made from the funds of this company for any political purpose, or for the benefit of any political candidate, directly or indirectly, nor shall any contribution from the funds of this company be made to any charitable, beneficial, public, or social purpose. Such contributions are matters appealing to stockholders and officers in their individual capacities, to be made or not as they individually desire; but they are in no sense corporate purposes and the cost of the same shall not be imposed upon this company.

This by-law shall not be construed to forbid the usual gratuities to employees or welfare work for their benefit; but all such expenditures must be approved before made, by the Board of Directors and made a matter of record.

Sec. 10. Trading between the Company in its corporate capacity and any of its officers in their individual capacities ought to be avoided as far as possible. Such trading often arouses suspicion and engenders a want of confidence in the Company or its officers and ought not to exist, except in exceptional cases. And if an exceptional case shall be deemed to exist, no such trade shall be effected or entered into until the proposition shall have been submitted in writing to the Board of Directors by the officer with whom it is proposed to trade and the Board of Directors shall have passed upon said proposition. If an officer with whom it is proposed to trade (either buying his property or selling to him the Company's property), be a director, he shall not be permitted to vote upon the proposition; and if so many directors be interested in the trade that a quorum of disinterested directors cannot be had, then the trade shall not be consummated until it shall have been approved by the stockholders in a meeting specially called, or at an annual meeting.

Sec. 11. If this Company shall issue preferred stock, bonds, or certificates of indebtedness, it shall be the duty of the directors and officers having in charge the issue of the same to provide in every such instrument a clause whereby the said preferred stock, bonds, or certificates of indebtedness may be called in for redemption at any interest or dividend date named therein, by the payment to the holders thereof of the principal thereof, together with any unpaid dividends or interest in arrears, with interest thereon, if the same be provided; and, in addition thereto, pay a small bonus over and above the par value of the same and accrued interest or dividends on said stock, bonds, or certificates of indebtedness.

The purpose of this is to enable the Company to retire any or all of its said stock, bonds, or certificates of indebtedness at any time it may desire to do so, upon reasonable terms.

Sec. 12. It shall be the duty of the officers and directors of this Company to familiarize themselves with all of the by-laws, and to see that all by-laws are obeyed and enforced. And, if the directors should, at any time, decide, under the powers given them, to amend, modify, change, or repeal any of these by-laws, such amendment or change shall be expressly set forth in the President's next report; and shall be read in full at the next meeting of the stockholders, whether the same be annual, special, or adjourned.

Sec. 13. No officer, director or employee shall make, execute or deliver any note, bond, obligation or other evidence of indebtedness for this company, unless prior authority thereto shall be given by resolution of the board of directors; nor shall any officer, director or employee make any accommodation endorsements, or any endorsement of any character in the name of this company, except where the proceeds of the checks, papers, acceptances, etc., are paid into the treasury of this company, unless similar prior authority shall be given by resolution of the board of directors; and no notes or obligations of this company shall be exchanged for the notes or obligations of any other company or person, without such prior authority.

Article II.

Stockholders' Meetings, Manner of Calling Same and Rights of Stockholders.

Section 1. The annual meeting of the stockholders of this Company shall be held on the _____ in _____ in each and every year, at the office of the Company in the _____ of _____ County, North Carolina. At said annual meeting _____ directors shall be elected by a majority vote, by ballot, to serve one year, and until their successors shall have been elected and qualified, subject to termination of office as provided in Article 1, Section 2. At said meeting it shall be in order to consider all matters of concern to the Company, and no previous notice need be given of such matters. The President and Treasurer shall each file at each annual meeting reports for the preceding year; and the said reports shall be recorded on the minutes of the Company and the originals preserved.

Sec. 2. Special meetings of the stockholders may be called by order of the Board of Directors, and it shall be their duty to call such meetings upon the written request of one-third of the stock. At such special meetings reports of all officers may be required; and, if required, considered and acted upon and recorded on the minutes and preserved. All amendments to By-Laws made by Directors since last meeting shall be read in full.

Sec. 3. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of _____ stock

held by him, which vote may be given personally, or by proxy duly authorized, and which authority shall be filed with the Secretary of the Company. No person shall act as proxy unless he be a stockholder of record. The directors shall prepare suitable proxy blanks for use of stockholders desiring to use the same. The authority to a proxy may be written or printed, or partly written and partly printed, and shall be signed by the stockholder giving the same, and shall be witnessed. The following, or any substantially similar form of proxy, shall be sufficient:

Form of Proxy.

I, _____, being the owner of _____ shares of the capital stock of _____ Company, do hereby make, constitute, and appoint _____ my true and lawful proxy to represent me, and to vote all of my stock, and to cast all of the votes belonging to me by virtue of my ownership of said shares of stock at the _____ meeting of stockholders to be held on _____, the _____ day of _____, 19____, and at all adjournments of said meeting. And I do hereby fully ratify, approve and confirm all such acts as he may do and perform under and by virtue of this proxy.

Witness my hand and seal, this _____ day of _____, 19____.

Witness: _____

(Seal.)

The proxy may be for one meeting only, or for one meeting and all adjournments thereof, or it may cover all meetings, whether regular, special, or adjourned to be held within any given period, not exceeding, however, the term of three (3) years from date, a proxy being void after three (3) years under the laws of North Carolina. The proxy may be subject to revocation; and it may provide that it shall not be voted at any meeting when the person giving the same be present at that meeting. This clause in this section, or the substance thereof, should be printed on the back of the Proxy Blank.

Sec. 4. A quorum shall consist of stockholders representing in person, or by proxy a majority of the outstanding stock. If

no quorum be present at any meeting, it may be adjourned from time to time until a quorum be present.

Sec. 5. Ten days' notice of a meeting shall be given to each stockholder personally, or by mail in a letter addressed to him at his last known address. If notice be given by mail, a letter properly addressed to the stockholder at his place of residence as indicated by the stock books, and with the proper amount of postage thereon, and deposited in the postoffice at-----, not less than ten (10) full days prior to the date of meeting shall be a sufficient notice to such stockholder; or a notice delivered by an officer of this Company or by any legal process server to the stockholder, in person, not less than ten (10) full days before the date of said meeting shall likewise be sufficient notice to such stockholders. And without service of notice of the same a meeting may be held at any time, provided each and every stockholder shall consent to such meeting and waive, in writing, the notice required by law. No meeting of stockholders shall be lawful, unless every stockholder shall have been notified in one or more of the ways indicated in this section; or unless such notice shall have been waived by the stockholders not regularly notified.

The President or Board of Directors calling a special meeting of stockholders may, if he or it deem the same advisable, publish a notice of the call in some newspaper published in-----, and having a general circulation; but such publication of notice shall not be necessary for the holding of a legal meeting, and shall be for information only.

At each meeting of the stockholders, and likewise at each meeting of the directors, the Secretary shall file the call for the meeting, and shall state how each stockholder or director was notified of said meeting. Such statement shall be signed by the Secretary, made a part of the minutes and inscribed upon the minute book.

Sec. 6. Each holder of any of the capital stock of the Company shall be entitled to a certificate, signed by the President, with the corporate seal of the Company thereto affixed and attested by the Secretary, a record of which shall be kept by the Treasurer. No stock shall be transferable, except upon the books of the Company, and upon the surrender and cancellation of the outstanding certificate; no stock shall be issued until fully paid for in money or its equivalent. All receipts given for stock shall be preserved.

Sec. 7. The stock books of the Company shall be the only evidence as to who are the stockholders of the Company.

Sec. 8. Every stockholder of record, after having been such for not less than thirty (30) days shall be entitled on demand to an inspection of the books of the Company and may repeat such demand, and have such inspection, thereafter from time to time as often as he may desire.

Sec. 9. The order of business and rules of procedure in stockholders' meetings, (and also in directors' meetings, as far as applicable), shall be as follows:

(a) The President, or in his absence, the Vice President, or in the absence of both, any stockholder, shall call the meeting to order and appoint a proxy committee. The said proxy committee shall immediately examine the proxies and report upon the stock represented by proxy.

(b) The secretary shall state how notice of the meeting was given each stockholder, and then call the roll of stockholders to ascertain whether, together with the proxies, there be a quorum present.

(c) If a quorum be not present, the meeting shall be adjourned to a day certain, not earlier than ten(10) days; and the Secretary shall give notice in writing of such adjourned meeting to all stockholders as is provided in Article II, section 5 of these By-Laws, except that such stockholders as are present may, at that time, accept service of the said notice, in writing; and additional notice need not be given to them. If a quorum be present, the President or person acting as President, shall state the object of the meeting; and, if requested to do so, have read the call for the meeting.

(d) The minutes of the last meeting shall be read, corrected and approved.

(e) Written reports of officers submitted and read; and all changes in the By-Laws, by repeal, amendment or otherwise made since the last meeting, read in full. Approval or disapproval of any or all of the acts of directors or officers, recounted in said reports. And specific approval by resolution given to important acts, such as sales of property, issue of bonds, leases of property, changes in charter, increase of capital stock, or other unusual acts.

(f) Written reports of committees, if any, submitted and read.

(g) Unfinished business carried over from former meetings, taken up and considered.

(h) If the meeting be an annual meeting, the election of directors, and after their election the appointment of all standing committees. (The election of directors must remain open for one hour, unless all stock be represented in person or by proxy and shall have all voted; or unless all stockholders waive this privilege in writing. Sec. 1175, Consolidated Statutes.) Stock and transfer books must be produced at time and place of election. Directors failing to produce books ineligible for election. Sec. 1171, Consolidated Statutes.

(i) New business.

(At directors' meetings it will not be necessary to appoint a proxy committee, as proxies are not allowed.)

Sec. 10. In meetings of stockholders and directors the ordinary rules of order shall govern as far as applicable, except as follows:

(a) It shall not be necessary to second any motion, and any motion may be put to a vote without a second.

(b) No limit shall be placed upon debate and discussion until after every stockholder present shall have had an opportunity to be heard once for a reasonable length of time; and then debate shall only be closed by a two-thirds vote.

(c) Points of order and technical rulings, tending or having the effect of cutting off or discouraging debate shall not be favored; and all rules of order shall be liberally interpreted in favor of reasonable latitude for speech on the part of all stockholders or directors.

Reports of officers and directors shall not be deemed to have been finally approved, and shall remain subject to discussion until the meeting shall have adjourned; notwithstanding a formal vote of approval shall have been taken earlier in the meeting.

Article III.

General Provisions.

This Article contains by-laws of a general nature and binding without further direction upon all directors and officers of the Company.

Section 1. -----Bank is hereby declared to be and is made the depository of the funds of the company. All deposits of the funds of this Company shall be made in said

bank; and the same shall be drawn out only upon voucher checks signed in the name of the Company by the Treasurer and countersigned by the President. A copy of this section of the by-laws, duly authenticated by the signatures of the President and Secretary, and attested by the seal of the Company shall forthwith be delivered to said bank as notice to said bank of its appointment as depository of this Company, and of the restrictions upon the drawing of checks in the name of this Company.

Neither the Treasurer, nor his bond, shall be responsible for loss of any funds of the Company occasioned by his deposit of the same in said bank; and the Company assumes the risk of the solvency of its depository.

Sec. 2. The Treasurer shall execute a bond in the penal sum of -----dollars, payable to the Company, conditioned for the faithful performance of his duties. Said bond shall be executed in some Surety company, to be named by the Board of Directors. The premium upon said bond shall be paid by the Company. The directors may, at any time, upon giving ten (10) days' notice to the Treasurer, require an increase in said bond in such an amount as the Board of Directors may deem proper, the premium upon such increase in said bond to likewise be paid by the Company. The bond of the Treasurer shall be delivered to, and at all times held by the President.

Sec. 3. All payments of money made by this Company shall be supported by vouchers; and no payment of money shall be made by the Treasurer, or other officer making the payment, except in so far as the same shall be supported by a proper voucher.

A system of voucher checks shall be adopted by the Board of Directors whereby on the same sheet on which the check is drawn shall be prepared a blank for the voucher, showing for what the check was drawn; and the stub for the check shall likewise be the stub for the voucher, so that the check will have attached to it a statement of the purposes for which it was drawn, and the stub in the check book will likewise contain a memorandum of the check and of the voucher for which the check was drawn. When paid, the checks and vouchers attached thereto shall be preserved, during the corporate existence of the Company. Said checks and vouchers shall be kept month by month, and year by year, and so kept that the checks and vouchers for any one month and year can be produced by the proper officer promptly. All check books shall likewise be preserved, so that the stubs thereof

may show all payments and the causes thereof. No check books, checks, or vouchers shall ever be destroyed.

Where a check shall be given to cover a pay-roll or a lot of sundries, too numerous to be written in the space provided for in the voucher, a statement on the voucher that it covers pay-roll for a certain period, giving the date thereof, and that a copy of said pay-roll will be attached to the check and voucher when returned after payment by the bank will be accepted as a compliance with this section.

Likewise when a check be given for the payment of an account for sundries, presented by an officer as is provided for in Article III, section 7, of these By-Laws, the voucher part of said check may contain a similar statement, to the effect that the payment covered a list of sundries purchased by an officer of the Company, and that a list of said purchases will be attached to the check and voucher when returned after payment by the bank will be accepted as a compliance with this section.

The voucher checks and stubs required by this By-Law shall be in the following or substantially similar form, to-wit:

(FORM OF VOUCHER CHECK.)

 (Name of this Company.)
 -----, N. C., ----- 19-----

 (Name of Company's Depository.)
 Pay to the order of -----

 (Name of Payee.)
 ----- Dollars (\$-----).
 for -----
 Countersigned and approved by -----
 -----, By ----- Treasurer.

 (THIS CHECK WILL NOT BE VALID IF VOUCHER BE
 (President.)
 DETACHED.)
 Voucher No. -----
 Received of -----

 (Name of this Company.)
 ----- Dollars (\$-----)
 Dated at: -----, 19-----
 ----- (Seal.)

 (Name of Payee.)

**The Above Check Must Be Endorsed on Back and Voucher Must
Be Dated by Payee.**

The stub shall contain the number of the voucher check, the date, name of payee, the amount and succinct statement of purpose for which the check was issued; and the stubs shall be a part of the bound check book.

Sec. 4. It is the purpose of this Company to avoid one man or family control otherwise than by stock ownership; and, for that purpose, no officer shall employ any member of his own family; but, by a vote of the stockholders, any person, whether a member of an officer's family or not, shall be eligible to employment.

Sec. 5. The affairs of this Company shall be managed actually and not merely in theory by its Board of Directors; and the said Board of Directors shall consist of-----members, who shall be stockholders, and who shall be elected annually to serve for one year and until their successors shall have been elected and shall have qualified (subject, however, to Article I, Sec. 2, preceding).

Sec. 6. No verbal authority to officers of this Company shall be valid. All authority to officers must be by virtue of by-laws or resolutions of stockholders or directors, duly adopted before the action authorized thereby shall be taken and recorded on the minutes of the Company promptly thereafter as provided in Article V, section 3 of these By-Laws. Officers of this Company in carrying out the course of action adopted as aforesaid may give verbal orders to employees, and deal with outsiders according to the usual course of business.

Sec. 7. In order that the debts and liabilities of this Company shall, at all times, appear upon its books, no officer or employee of this Company shall be permitted to file or assert against it any claim for services performed or expenses incurred, unless the Board of Directors shall have, prior to the performance of such service or the incurring of such expense, passed and had spread upon the minutes a resolution authorizing the performance of said service, and the price to be paid therefor, and the expenditures of money covered by an expense account. And no claim shall be presented against or allowed by this Company for the use or occupancy of an office or desk room, for the use of the telephone, iron safe, etc., unless, prior to the use of the same, a resolution to that effect shall have been passed by the Board of Directors and spread upon the minutes. Any officer accepting

a position under this Company shall do so with the understanding that he consents to all the provisions of this section; and that he will obey the same.

One of the purposes of this section is to prevent unpleasant disputes which may arise if an officer of this Company shall, after performing certain duties, etc., present claims for part rental of an office he was using at the time he was elected, for the use of telephone, desk, desk room, iron safe or other office facilities. And an election of an officer already having an office shall be construed to be a consent by him that this Company shall not be expected to pay any part of his said office expenses, unless at or before his election to office, provision be made for the payment thereof.

Sec. 8. That the payment of such incidental expenses as stationery, postage, telegrams, long distance telephone, taxes, car and hack fare may be provided for by resolution of the Board of Directors, duly recorded on the minutes, authorizing a certain officer to pay for the same within certain definite limits of time and amount. And the officer paying such accounts shall keep an accurate account thereof and shall submit the same to the next succeeding meeting of the Board of Directors for audit and approval; and after payment, shall preserve such account, so audited and approved, among the records of the Company. The officer, or employee, incurring such expense will always bear in mind that a policy of dignified economy is the course approved by the Company. He should not hesitate to use the wires, express, or fast freight when the interest of the Company will be promoted thereby; but when mail, freight or water transportation will serve the purpose equally as well, he should always adopt the less expensive method.

Sec. 9. That where any service shall be performed for this Company by an officer or stockholder it shall be presumed to be free and voluntary, without expectation of compensation except such benefit as shall accrue to the Company; unless, prior to its performance, the Board of Directors shall have, by resolution, authorized and directed the performance of the work and provided compensation therefor, either fixing the amount of compensation or providing in said resolution how the amount may thereafter be fixed. All services not performed under and by such resolution previously adopted shall be considered voluntary and shall not be the basis of any claim against the Company, nor shall the Company pay therefor.

No loans of corporate funds, and no advances against salaries or wages, shall be made to any stockholder, officer or employee, unless authority to make such shall have been previously given by resolution of either stockholders or directors.

Sec. 10. The President and Treasurer shall make reports to each annual meeting of the stockholders, and at such other times as they may be required by the Board of Directors to make reports; and whenever they shall make a report the same shall be in writing, and each report shall be signed by the officer making it, and promptly transcribed upon the minutes of the Company.

The report of the President shall cover in a general way the operation and business of the Company from the date of the last report; and he shall give his views upon the situation and make such suggestions as may occur to him as being beneficial to the Company.

The report of the Treasurer shall likewise cover the period since the last report, and shall embrace any matters especially committed to him and shall always contain a statement of the financial condition of the Company. This statement shall be in plain terms, easy to understand and not in the technical terms of a bookkeeper. He shall give a list and make an estimate of the value of all the tangible property of the Company and all the assets of the Company, including debts owing to it and from whom said debts are owing. He shall likewise give a full and detailed statement of the liabilities of the Company, including the capital stock, with a list of the stockholders and the amount of their stock. In giving the liabilities of the Company he shall state the names of the persons to whom the same are owing, when the same shall become due and for what the debts were incurred. In order that the report of the Treasurer may not be unnecessarily long it is made the duty of the Treasurer, during the month preceding the date of his annual report to be diligent in collecting whatever may be owing to the Company, and in paying current bills due by it, thus shortening the debit and credit sides of his statement. The Treasurer shall also make any suggestions and recommendations that may occur to him as being of value to the Company.

The said reports of the President and Treasurer shall be preserved among the records of the Company.

Sec. 11. The directors and all of the officers of this Company are charged with the duty of protecting, as far as possible, this Company from litigation, and especially to protect it against suits for damages for personal injury to employees or the public.

To this end they are earnestly requested to make, from time to time, inspections of the Company's property for the special purpose of ascertaining whether there be any dangers, which can be removed or protected against; and, if such be found to exist, to take immediate steps to remove said dangers. They shall also adopt such safety rules and appliances as are, in their opinion, desirable and effective in obviating the dangers, if any, incident to the operation of this Company.

They shall also see that discipline among the employees and obedience to the rules are enforced. They shall also be careful to prevent any work about the property of this Company by inexperienced hands or volunteers, or by persons changing from the work assigned to them to other work with which they are not familiar.

They shall also positively forbid, under penalty of discharge, any playing or frolicking in or around any of the property of this Company; and they shall warn superintendents and foremen to be especially on guard in preventing lax discipline or violation of the rules of the Company shortly before the close of a day's or week's work, as at those times employees seem especially liable to take chances and do their work in a dangerous way.

Sec. 12. All officers and directors are advised and requested to read the chapter in volume 1 of the Consolidated Statutes entitled "Corporations," including any amendments thereto, and to familiarize themselves with its requirements, to the end that this Company may in all respects obey and conform to the law, and that its officers may not incur the liabilities, pains, and penalties therein contained for failure to obey the law. They are also requested to inform themselves, after each session of the General Assembly, of any changes in the law; either by way of amendment to the former law, or by new legislation.

Article IV.**Directors, Power, Authority and Duties.**

The affairs of this Company shall be managed by its officers and Board of Directors, and in the manner prescribed in the various articles of these By-Laws; and special duties are imposed upon and required of directors and officers of this Company, respectively, as follows:

Section 1. The Board of Directors elected, or to be elected, as provided in Article III, section 5, of these By-Laws shall have full control and authority over the management of all the affairs of this Company. It shall direct all the officers of the Company in the performance of their duties, and shall have power to require each and every officer to perform all the duties required of him by the By-Laws; and, in addition to the duties expressly imposed upon the officers of the Company by the By-Laws, the directors shall have the right to impose upon each officer any special duties they may think proper.

The Board of Directors shall have full power and authority to fix the amount of the earnings and profit of the Company which shall be reserved as additional working capital, and from time to time the amounts to be reserved may be increased or diminished as the situation of the Company may justify. The surplus earnings not so reserved may be declared and paid out as dividends.

Sec. 2. The Board of Directors shall have power to fill, by election, all vacancies occurring in its own body until the next annual meeting of the stockholders.

Sec. 3. The Board of Directors shall have power to make, amend or repeal any by-law; but such by-law, amendment, or repeal of any by-law shall be recorded upon the minute book within thirty (30) hours from the time of its adoption or repeal. The directors shall, after enacting, amending or repealing a by-law, give to the stockholders as early information thereof as is practicable. This power of amendment has been conferred upon the directors in the confidence that it will be exercised prudently; and only upon occasions of emergency when the interests of the Company shall demand its exercise, and that ordinarily all propositions to change the By-Laws will be referred by the directors to the stockholders for action by the latter.

Sec. 4. The Board of Directors shall have power to appoint or elect all necessary officers or committees, employ agents, factors, clerks, and workmen and fix their compensation and prescribe their duties; and also dismiss any appointive or elective officer without previous notice and generally control and manage the affairs of the Company. It shall see that the Secretary keeps an accurate account of all proceedings of the Board of Directors in the minute book of the Company provided for that purpose.

Sec. 5. The Board of Directors shall annually elect the following officers, who shall hold their respective offices for one year, and until their successors shall be elected and qualified: A president, a vice president, a secretary, and a treasurer; and the office of secretary and treasurer may be combined and the duties of both thereafter be performed by one person, to be called Secretary-Treasurer. Directors may afterwards separate said offices if it be deemed advisable to do so. All officers and employees elected, appointed or employed by the Board of Directors shall be subject to discharge during their term of office or employment without notice and without cause by a vote of two-thirds ($\frac{2}{3}$) of all the directors or by a vote of two-thirds ($\frac{2}{3}$) of all the stockholders as provided for in article 1, section 2 of these By-Laws. And all officers and employees shall be deemed to have accepted their office or employment subject to such discharge.

Sec. 6. The Board of Directors shall fill all vacancies occurring among the officers.

Sec. 7. Meetings of the Board of Directors may be had at any time and may be called by the President alone or by any two directors or by the stockholders representing not less than twenty (20%) per cent of the outstanding stock; and notice of such meeting may be served in the same manner as is provided for serving notice of stockholders' meetings.

Meetings of the Board of Directors may be held by unanimous consent of said board at any time or place upon call and notice, or upon waiver of call and notice; and in every instance the manner of call or waiver of service and notice shall be certified to by the Secretary and inscribed upon the minute book.

The directors may, if they deem it advisable so to do, by proper resolution, fix certain days for their regular meetings. But, notwithstanding this by-law, it shall be the duty of the Secretary to give to each director notice of said meeting in the same manner as is hereinbefore provided.

Sec. 8. At each annual meeting of the stockholders of the Company it shall be the duty of the directors to require of the officers of the Company a statement of its financial condition and the condition of its business, its prospects, etc.; and have copy of such statement furnished by mail, or otherwise, to every stockholder.

Article V.

Duties of Officers.

(Other than Directors.)

Section 1. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors; and shall see that all orders and resolutions of the Board of Directors are carried out; execute all conveyances, contracts, and agreements authorized by the Board of Directors; sign all the certificates of stock; with the Secretary sign all minutes of stockholders and directors meetings, and generally see that all the officers and agents of the Company perform their duties. The President shall retain in his possession the bond required of the Treasurer, and the President is charged with the duty of seeing that said bond is in proper form and is kept in force and effect. He shall make the report required by article 3, section 10 of these By-laws. He shall approve and countersign all checks drawn by the Treasurer.

The President is also charged with the duty of seeing that the business of this Company is at all times carried on in accordance with law; and shall see that all laws of the State and Nation and all police regulations relating to the health, safety, and welfare of employees are obeyed; and he is especially charged with the duty of seeing that there is no violation by this Company of any anti-trust, hours of labor, child labor laws; and that the anti-graft act, sec. 4475, Consolidated Statutes, be enforced.

Sec. 2. The Vice President shall perform the duties of the President in his absence.

When the Vice President shall do or perform any act which regularly should have been done or performed by the President, the reason shall be stated; and, if the act be the signing of a written instrument of any kind, or a note, check, draft, etc., the

reason why the same be signed by the Vice President shall be stated in the instrument or paper, or added thereto or endorsed thereon, at the time the Vice President shall affix his name thereto.

Sec. 3. The Secretary shall be ex officio the Secretary of the Board of Directors; and shall record all votes and keep the minutes of all proceedings in a book to be kept for that purpose; and shall record in said book all written reports made by any officer, and the substance of any verbal reports. With the President, he shall sign the minutes of the stockholders and directors meetings. He shall be the custodian of the corporate seal; and shall attest the same when affixed by order of the Board of Directors. It shall also be the duty of the Secretary to keep all the books, papers and records of the Company. And the minutes of this Company shall be written in a solid bound book and kept permanent; and the pasting in said book of typewritten copies of resolutions or by-laws shall not be considered a compliance with this by-law. The Secretary shall give to all stockholders and directors notice of meetings in the manner provided for in Article II, section 5 of these By-Laws without other or further direction than this By-Law. It shall be his duty to show that meetings were called and notices given to each stockholder or director in the manner prescribed in said By-Laws.

It is made the duty of the Secretary, without further direction than this By-Law to transcribe accurately, on the minute books, within fourteen (14) days from this date, the certificate of incorporation of this Company, the minutes of all meetings of stockholders and directors heretofore held, and of this meeting, including all by-laws and other proceedings; and it shall be his duty thereafter to transcribe accurately upon the minute books all proceedings of the Board of Directors and stockholders within thirty (30) hours after said proceedings shall have been had.

Whenever a resolution shall be adopted by the stockholders or directors authorizing or requiring an officer to do or perform any act, the Secretary shall, as soon as practicable, and not later than thirty (30) hours after the adoption of such resolution, furnish to such officer a copy of said resolution, signed by himself as Secretary, and with the corporate seal of the Company affixed thereto.

The Secretary shall record on the minutes all reports made in writing by any officer of this company, and shall preserve the originals.

Sec. 4. The Treasurer shall perform all the duties usually performed by a treasurer; and, as such, he shall collect, receive, hold, and account for the moneys of the company, endorse and collect all drafts, checks, and negotiable instruments and keep full and accurate accounts of the receipts and disbursements of the company, rendering a full account to each regular stockholders' meeting, and to the directors whenever requested to do so. He shall keep and preserve all paid checks, notes, acceptances, and other evidences of expenditures as near as practicable in the order of their payment. After each annual meeting, and after his accounts shall have been approved, he shall file away in suitable envelopes or containers all such checks and accounts for the preceding year; and these cancelled checks, etc., shall never be destroyed. He shall sign all checks issued by the company, and shall present the same to the President for his approval and countersignature.

And it shall be the duty of the Treasurer, without further notice or direction, to do the following things, to wit:

(a) To make all reports required by the laws of this state or of the United States, whether said reports be required to be made to the Corporation Commission, the Treasurer, the Auditor, the Secretary of State, Collector of United States Internal Revenue, or any other officer.

(b) To keep posted the sign over the office door required by section 1136 (herein 58) of the Consolidated Statutes; and to prepare and keep available the medical chest required by section 6556 (herein 173) of the Consolidated Statutes, and the toilet arrangements required by chapter 108, article 2, Consolidated Statutes, if this Company come within the purview of said facts.

(c) To see to the listing and payment of all taxes which may become due from this company to the United States or this state, county or city of any other state, county or city, including the franchise and corporation taxes payable direct to the State Treasurer.

(d) To prepare and, before filing, submit to the Board of Directors the tax lists of the company; and, before paying the taxes, inform the Board of Directors, in writing, of the amount of the same.

(e) To protect the company from all penalties, forfeitures, etc., for failure to list taxes and pay the same when due, or for failure to make reports to any officer or any department of the state or United States.

(f) To have duly recorded in the appropriate registries all title deeds to the company's property, and to preserve the originals after registration.

(g) To hold all bonds given to the company, except his own, which shall be held by the President or by some person or depository named by the Board of Directors.

(h) To see that the property of the company be fully covered by fire insurance; and to obtain sufficient indemnity insurance, if the same be deemed advisable by the Board of Directors to reasonably protect the company against accidents to employees, etc.

(i) To hold all insurance policies, both fire and indemnity, and to make notes of their respective dates of expiry; and, at least fifteen (15) days before the dates of their expiry call the attention of the same to the President and Board of Directors, in writing, and ask said Board of Directors to advise whether the same shall be renewed or allowed to lapse.

(j) To familiarize himself with the terms, conditions and requirements of all insurance policies, both fire and indemnity, carried by this company; and in case of loss covered by fire or indemnity insurance he shall immediately give notice to the agents of the respective companies in which this company has insurance and apply for the necessary blanks to make out proofs of loss. This duty shall be mandatory; and he shall give said notices whether the damage be great or slight.

(k) To give immediate notice, in writing, to all insurance companies in which this company may have policies of any change in the title to the property, sales of the same, encumbrances on, liens, judgments, or anything else existing in regard thereto, of which notice shall be required to be given in said insurance policies.

(l) To protect the company from loss on account of interest when funds are available to pay; and to protect the company from loss by reason of allowing its funds to lie idle in the depository when they might be paid upon its interest-bearing obligations. A report by him, in writing, to the Board of Directors, stating the situation and what funds may be available, and on what debts the same may be paid, shall be considered a compliance with this section.

(m) To require of all contractors doing work for the company, itemized statements of all indebtedness for labor or materials under Section 2439, Consolidated Statutes, before issuing voucher check to such contractors for payments under the contract.

(n) To call the attention of the Board of Directors to any matter whereby the financial welfare of the company may be promoted not herein specifically mentioned.

(o) To make the reports required of him by Article III, section 10 of these By-Laws.

Sec. 5. The duties of the Secretary and Treasurer may be combined in one officer, and when so combined, such officer shall perform all the duties hereinbefore prescribed for both the Secretary and the Treasurer. The duties of said offices may afterwards be separated; and thereafter be performed by different persons.

Sec. 6. The Board of Directors may, in the absence of any officer, delegate his power and duties to any other officer, or to a director, for the time being.

Upon the motion of Mr. _____, it was ordered that the meeting proceed to the election of _____ directors, to serve until the next annual meeting, and until their successors shall have been elected and qualified; and that the ballots be taken and counted by the President and Secretary. The following were placed in nomination:

Messrs: _____

There being no other nominations, the same were closed.

All of the stockholders of the company having cast their ballots, the statutory provision for keeping the polls open for one hour, was waived, and the polls closed.

The ballots were then counted by the President and Secretary with the following result:

Mr. _____ received _____ votes.

Mr. _____ received _____ votes.

Whereupon the following gentlemen were declared to have been duly elected directors to serve until the next annual meeting, and until their successors shall be elected and qualified: Messrs.

Upon motion of Mr.-----, it was ordered that this corporation do now begin business. And the Secretary of this company is hereby directed to inform the Secretary of State of this state, and the United States Collector of Internal Revenue for this district of this fact; and advise said officers that this company is ready to make all reports and pay all taxes required by the laws of the State of North Carolina or of the United States, and request that notices of said reports and call for said taxes be addressed to this company, to the end that it may comply with the same.

First Meeting of the Directors

of

-----,
 ----- Street,
 ----- o'clock-----
 -----, 19-----

This being the time and place appointed for holding the first meeting of the Board of Directors of-----, the following directors were present:

Messrs. -----
 they being all of the directors of the company, when and where the following proceedings were had:

Mr.----- acted as Chairman and
 ----- as Secretary.

The Secretary read the waiver of notice of this meeting, duly signed by all of the directors, a copy of which was ordered spread on the minutes, and the original filed with the secretary.

The following is a copy of the waiver of notice:

Waiver of Notice of Meeting of Board of Directors

of

_____, 19____

We, the undersigned, being all of the directors elected by the stockholders of _____ a corporation organized under the laws of the State of North Carolina, do hereby waive all and every notice of the time and place of the first meeting of the said board of directors, and of the business to be transacted at said meeting.

We hereby designate the _____ day of _____, 19____, at _____ o'clock, _____, as the time and _____ in the City of _____, _____, as the place for holding the first meeting of the said Board of Directors. The purpose of said meeting is the election of officers, the authorization of the issue of stock of said company, the authorization of the purchase of property, if necessary for the business of the company, and the transaction of such other business as may be necessary or advisable to facilitate and complete the organization of said company for the purpose of carrying on its contemplated business.

And we do hereby waive all requirements of the laws of the State of North Carolina, and of the by-laws of this company, both as to notice of the time, place, and object of said meeting; and we waive all publication of the same.

Witness our hands, this _____ day of _____, 19____
Witness:

The meeting being ready for business, the Chairman announced that the election of a President of the company was in order:

There w _____ nominated for President:

Mr. _____

There being no other nominations the same were closed.

A ballot for president was taken with the following result:

Mr. _____ received _____ votes.

Mr. _____ received _____ votes.

Mr. _____, having received a majority of

the votes cast, was declared duly elected President of the company for the current year, and until his successor shall have been elected and qualified; and by virtue of said office became Chairman of the Board of Directors.

The election of a vice president being in order M

w nominated:

There being no other nominations, the same were closed.

A ballot for vice president was accordingly taken with the following result:

Mr. received votes.

Mr. received votes.

Mr., having received a majority of the votes cast, was declared duly elected Vice President for the current year, and until his successor shall have been elected and qualified.

On motion of it was ordered that the amount of the Treasurer's bond be Dollars; that the form of the bond be subject to the approval of the President; and that it be obtained from Company for a period of one year. That the Treasurer to be elected today shall execute and deliver said bond with said surety to the President before he shall assume the duties of the Treasurer's office.

Upon motion of Mr., it was ordered that the offices of secretary and treasurer be combined; and that the duties of the same be performed by person.

The election of a secretary, being in order the following w nominated:

Mr.

Mr.

There being no other nominations the same were closed.

A ballot for secretary was accordingly taken with the following result:

Mr. received votes.

Mr. received votes.

Mr. having received a majority of the votes cast, was declared duly elected Secretary

-----of the company for the current year, and until his successor shall have been elected and qualified. (If office of Secretary and Treasurer be combined in the proceedings above the words "and Treasurer" should be written on the blank after "Secretary" and the minutes for election of Treasurer here following should be stricken out.)

The election of a treasurer being in order, the following w---- nominated:

Mr. -----

Mr. -----

There being no other nominations the same were closed.

A ballot for Treasurer was accordingly taken with the following result:

Mr. -----received-----votes.

Mr. -----received-----votes.

Mr. -----having received a majority of the votes cast, was declared duly elected Treasurer of the company for the current year, and until his successor shall have been elected and qualified.

On motion of Mr.-----, it was ordered that the Treasurer be instructed and authorized to open an account for the company with its depository-----, and to deposit therein the funds of the company coming into his hands; such account to be in the name of the company, and to be drawn upon only by voucher check, signed in the name of this company by the Treasurer-----and approved and countersigned by-----the President or in his absence, by ----- the Vice President.

On motion of Mr.-----, the following resolution was unanimously adopted:

Resolved, That in compliance with the laws of the State of North Carolina, this corporation have and continuously maintain a principal office and place of business within the State of North Carolina, and have an agent at all times in charge thereof, and upon which agent process against this company may be served, and therein keep the stock and transfer book of the company for the inspection of all who are authorized to see the same, and for the transfer of stock. That the books in which the transfer of stock shall be kept, and the books containing the names of the

stockholders, shall be at all times, during the usual hours of business, open at said principal office, to the inspection and examination of every person who shall have been for thirty (30) days a stockholder.

Resolved further, That the name of this Company shall be at all times conspicuously displayed at the entrance of its principal office in this State.

Resolved further, That until this resolution be rescinded by the stockholders, such office and principal place of business be in and at _____, _____ Street in the City of _____, N. C.

That Mr. _____, a resident of the State of North Carolina, be and hereby is appointed the agent of this corporation for all of the aforesaid purposes, and the agent of this company upon whom legal process against this company may be served within the State of North Carolina, and also the transfer agent of the stock of this company; and that a copy of this resolution, duly certified by the President, be delivered to the said Mr. _____ as evidence of his authority.

On motion of Mr. _____, the following resolution was unanimously adopted:

Resolved, That when the stock of this company shall have been prepared the Secretary and Treasurer shall offer for sale at par _____ shares of the same and place the proceeds of such sale in the company's said depository.

Resolved further, That the Secretary and Treasurer call upon the subscribers for payments for their stock; and that payment for said stock shall be made by the _____ day of _____, 19____; and certificate of stock shall be issued to the said subscribers when said stock shall have been fully paid for.

On motion of Mr. _____, it was ordered that the salary of the _____ be fixed at the sum of _____ dollars per month, which shall be paid by checks of the company, drawn as aforesaid on the _____ day of each and every month.

It was further ordered that the _____

be authorized to pay such sums as might be necessarily incurred in sending and receiving long distance telephone messages, and telegraph messages made necessary by the business of the company. He is also authorized to purchase such stationery and postage as may be necessary from time to time and pay such car and hack fare as may be necessary from time to time in the conduct of the business of the company. All said purchases and expenditures may be made and incurred without further authority than this resolution. And he shall be reimbursed for said purchases and expenditures monthly at the same time he is paid his salary: Provided, he shall present an itemized account of the expenses so incurred. Upon approval of said account check may be drawn in the manner hereinbefore provided to reimburse the ----- for said expenses.

(If an attorney or other officer be fixed with any specific duty and a salary provided, resolutions fixing such duties and salaries should here be adopted.)

(Here the business for which the company was organized should be taken up, and the necessary directions given in appropriate resolutions, which should be spread upon the minutes. It is not practicable to suggest what form the resolutions should take. But specific resolutions mapping out work and authorizing expenditures, renting offices, employing persons, and all such acts, are desirable and should be set out in full in these minutes.)

EXPANDING MORTGAGE.

Parties—Recitals:

THIS INDENTURE, bearing date the first day of ----- 192-- and made and entered into by and between ----- Power & Light Company, a corporation of the State of -----, hereinafter sometimes called the company, party of the first part, and ----- Trust Company of New York, a corporation of the State of -----, hereinafter called the Trustee, as Trustee, party of the second part, witnesseth:

Company Formed by Merger.

Whereas, the company is a consolidated corporation, formed by the consolidation and merger of The -----

Light and Power Company, -----Gas Com-
pany, and -----Electric Company;

Description of Bond Issue.

Whereas, the company has deemed it necessary to borrow money for its corporate purposes and to issue its bonds therefor, and to mortgage and pledge its property, hereinafter described, to secure the payment of such bonds, and to that end has duly authorized and directed an issue of its bonds to be designated as its "First and Refunding Mortgage Gold Bonds" to be issued in one or more series maturing at such dates not later than February 1, 1961, and bearing interest at such rates respectively, as the Board of Directors of the company, prior to the issue thereof may determine, such bonds to be coupon bonds with interest coupons attached, with the fac-simile signature of the present or any future Treasurer of the company engraved thereon, and registered bonds, without coupons, issuable as in this Indenture hereinafter provided; to be signed in its corporate name by its President or a Vice President, impressed with its corporate seal, attested by its Secretary or an Assistant Secretary, and authenticated by the certificate of the Trustee; which said coupon bonds, coupons, registered bonds without coupons and Trustee's certificates are to be substantially in the forms following, respectively—the proper amount, series and numbers, dates of issue, dates of maturity and rates of interest to be inserted therein, and such appropriate insertions, omissions and variations to be made in respect of any of such bonds and coupons as may be authorized by the Board of Directors of the company to express the terms and conditions upon which the same are to be redeemable before maturity (if so redeemable); to express the terms and conditions of exchangeability of the bonds; to express the covenants of the company in regard to payment of taxes, and in other respects to express the terms and conditions on which such bonds are issued as required or permitted by this Indenture:

[Form of Coupon Bond]

UNITED STATES OF AMERICA,

State of-----

-----POWER & LIGHT COMPANY.

First and Refunding Mortgage Gold Bond.

No.----- Series----- \$-----

-----Power & Light Company, a corporation of the State of----- (hereinafter called the Company), for value received, hereby promises to pay to the bearer, or, if this bond be registered, to the registered holder hereof, on the----- day of-----, 19____, at the office or agency of the company in the Borough of Manhattan, City of New York, ----- dollars in gold coin of the United States of America, of the present standard of weight and fineness, and to pay interest thereon from-----, at the rate of----- per centum per annum in like gold coin, payable at said office or agency on the ----- days of----- and----- in each year according to the tenor of the respective coupons hereto attached, and upon presentation and surrender thereof, until such principal shall be paid.

This bond is one of an issue of bonds of the Company, known as its First and Refunding Mortgage Gold Bonds, all issued and to be issued under and equally secured by a Mortgage and Deed of Trust (hereinafter called the Mortgage), dated----- 192__, executed by the company to----- Trust Company of New York, as trustee, to which this bond is subject and to which reference is made for a description of the property mortgaged and pledged, the nature and extent of the security, the rights of the holders of the bonds in respect thereof and the terms and conditions upon which the bonds are issued and secured. The principal hereof may be declared or may become due on the conditions, in the manner and at the time set forth in the Mortgage upon the happening of a default as in the Mortgage provided.

This bond may be registered as to principal in the owner's name at said office or agency of the company, such registration being noted hereon, after which no valid transfer hereof can be made, except at said office or agency, until after registered transfer to bearer, but after such registered transfer to bearer this bond shall be again transferable by delivery. Such registration, however,

shall not affect the negotiability of the coupons, which shall always remain payable to bearer and transferable by delivery.

No recourse shall be had for the payment of the principal or interest of this bond against any stockholder, officer or director of the company, either directly or through the company, under any statute or by the enforcement of any assessment or otherwise, all such liability of stockholders, directors and officers being released by the holder hereof by the acceptance of this bond and being likewise waived and released by the terms of the Mortgage.

This bond shall not become obligatory until _____ Trust Company of New York, the Trustee under the Mortgage, or its successor thereunder, shall have signed the form of certificate endorsed hereon.

In witness whereof, _____ Power & Light Company has caused this bond to be signed in its name by its President or a Vice President and its corporate seal to be hereto affixed and attested by its Secretary or an Assistant Secretary, and interest coupons bearing the engraved fac-simile signature of its Treasurer to be attached hereto, as of the _____ day of _____, 19____.

_____ Power & Light Company,

By _____

Attest: _____ President.

_____ Secretary.

[Form of Coupon.]

No. _____ \$ _____

On the _____ day of _____, 19____, _____ Power & Light Company will pay to bearer, at its office or agency in the Borough of Manhattan, City of New York, _____ dollars in gold coin, as specified in its First and Refunding Mortgage Gold Bond No. _____, Series _____, being six months' interest then due on said bond.

This coupon will not be payable if said bond shall have been called for previous redemption.

_____,
Treasurer.

The words "This coupon will not be payable if said bond shall have been called for previous redemption" will appear only upon coupons to which they are applicable by reason of provisions for redemption prior to maturity contained in the bonds to which such coupons are attached.

[Form of Registered Bond Without Coupons.]

UNITED STATES OF AMERICA,

State of _____

_____ Power & Light Company.

First and Refunding Mortgage Gold Bond.

No. _____ Series _____ \$ _____

_____ Power & Light Company, a corporation of the State of _____ (hereinafter called the Company), for value received, hereby promises to pay to _____ or registered assigns, on the _____ day of _____, 19____, at the office or agency of the company in the Borough of Manhattan, City of New York, _____ thousand dollars in gold coin of the United States of America, of the standard of weight and fineness as it existed on the _____ day of _____, 19____, and to pay to the registered holder hereof interest thereon from the interest day (_____ or _____) next preceding the date of this bond, at the rate of _____ per centum per annum in like gold coin, payable at said office or agency on the _____ days of _____ and _____ in each year, until such principal shall be paid.

This bond is one of an issue of bonds of the company, known as its First and Refunding Mortgage Gold Bonds, all issued and to be issued under and equally secured by a Mortgage and Deed of Trust (hereinafter called the Mortgage), dated _____ 192____, executed by the company to _____ Trust Company of New York, as Trustee, to which this bond is subject and to which reference is made for a description of the property mortgaged and pledged, the nature and extent of the security, the rights of the holders of the bonds in respect thereof and the terms and conditions upon which the bonds are issued and secured. The principal hereof may be declared or may become due on the conditions, in the manner and at the time set forth in the Mortgage, upon the happening of a default as in the Mortgage provided.

This bond is transferable as prescribed in the Mortgage by the registered holder hereof in person, or by his duly authorized attorney, at the said office or agency of the company at the City

of New York, upon surrender and cancellation of this bond, and, thereupon, a new registered bond without coupons of the same series will be issued to the transferee in exchange therefor as provided in the Mortgage, and upon payment, if the company shall require it, of the transfer charges therein prescribed.

No recourse shall be had for the payment of the principal or interest of this bond against any stockholder, officer or director of the company, either directly or through the company, under any statute or by the enforcement of any assessment or otherwise, all such liability of stockholders, directors and officers being released by the holder hereof by the acceptance of this bond and being likewise waived and released by the terms of the Mortgage.

This bond shall not become obligatory until-----
Trust Company of New York, the Trustee under the Mortgage, or its successor thereunder, shall have signed the form of certificate endorsed hereon.

In Witness Whereof, -----Power & Light
Company has caused this bond to be signed in its name by its
President or a Vice-President and its corporate seal to be affixed
hereto, attested by its Secretary or an Assistant Secretary this
-----day of-----, 19-----

-----Power & Light Company,
By-----
President.

Attest:
-----Secretary.

[Form of Trustee's Certificate.]

This bond is one of the bonds described in the within-mentioned Indenture.

-----Trust Company of New York,
Trustee,
By-----

Whereas, all things necessary to make said bonds when duly authenticated by the Trustee, and issued by the company, valid, binding and legal obligations of the company, and to make this Indenture a valid, binding and legal instrument for the security thereof have been done and performed and the issue of said bonds, as in this Indenture provided, has been in all respects duly authorized:

Grant and Conveyance.

Now, therefore, this indenture further witnesseth: That-----
----- Power & Light Company, in consideration of the premises and of one dollar to it duly paid by the Trustee at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the payment both of the principal and interest of the bonds aforesaid, according to their tenor and effect, hath granted, bargained, sold, released, conveyed, assigned, transferred, pledged, set over and confirmed, and by these presents doth grant, bargain, sell, release, convey, assign, transfer, pledge, set over and confirm unto-----
Trust Company of New York, as Trustee, and to its successor or successors in said trust, and to it and its assigns forever, all the following described properties—that is to say:

General Description.

All and singular the lands, real estate, chattels real, power houses, power plants, gas works, gas plants, buildings, structures, improvements, works and sites, flowage and flooding rights, water rights, dams, flumes, raceways, weirs, transmission and distributing systems (both gas and electric), stations, substations, towers, poles, lines, cables, wires, pipes, conduits, telephone lines, switchboards and insulators, franchises, permits, privileges, consents, licenses, choses in action, contracts or agreements for lighting (whether street, domestic or otherwise) or for heat, light or power, machinery, engines, boilers, dynamos, condensers, pumps, steam heaters, transformers, gas holders, expansion tanks, gas mains and pipes, service pipes, fittings, valves, connections, gas and electric meters, generators, mechanical and gas and electric appliances, apparatus, equipment, tools, furniture, stores and supplies, (including all rights in and to any and all of the foregoing), now owned, or that may hereafter be owned or acquired by the company, including all property constituting a part of or used, occupied or enjoyed in connection with or in anywise appertaining to the business of the company or its light, heat, power and gas systems, and all other properties of the company located in the counties of-----

and any other systems and properties of the company hereafter constructed or acquired, of whatever character and wherever situated, as well as all other property of the company of every

kind and character whatsoever, real, personal or mixed, tangible or intangible, whether acquired by deed, lease or otherwise, whether situated in any of the Counties above mentioned or elsewhere, or whether now owned or hereafter acquired, (except shares of stock, bonds and securities not specifically pledged hereunder). The said property includes among other things the following, but reference to or enumeration of any particular classes, kinds or items of property shall not be deemed to exclude from the operation and effect of this Indenture any kind, class or item not so referred to or enumerated, except as aforesaid;

FIRST.

Specific Description of Properties: Generating plants, etc.

The electric generating plants, power sites and stations of the company, including all dams, power houses, buildings, diversion works, pipe lines, canals, flumes, raceways, structures and works, and the land of the company on which the same are situated, and all the company's lands and easements, rights of way, flowage rights, flooding rights, permits, privileges, licenses, poles, wires, machinery, equipment, appurtenances and supplies, forming a part of said plants, sites or stations, or any of them, or used or enjoyed, or capable of being used or enjoyed in conjunction with any of the power plants, sites, stations, lands, property, rights, easements, or privileges, including the following situated in the -----: (Here follows detailed description).

Also all other electric generating plants, power sites, power houses and stations, or parts thereof, whether developed, undeveloped or partially developed, and whether now equipped and operating or not, and wherever situated, and all property, real, personal or mixed, acquired for use in connection therewith, all works, power houses, buildings and structures, and all the company's right, title and interest in and to land on which the same are situated, and whether now owned by the company or hereafter acquired, and also all rights of way, easements, permits, franchises and privileges owned, used or enjoyed in connection therewith, whether now owned or hereafter acquired.

SECOND.

Electric Substations and Substation Sites.

The electric substations and substation sites of the company, including all buildings, structures, towers, poles, all equipment,

appliances and devices for transforming, converting and distributing electric energy, and the land of the company on which the same are situated, and all of the company's lands and easements, rights of way, rights, machinery, equipment, appliances, devices, appurtenances and supplies forming a part of said substations or any of them, or used or enjoyed, or capable of being used or enjoyed, in conjunction with any thereof, including the following situated in the Commonwealth of -----: (Here follows detailed description).

Also all other electric substations and substation sites or parts thereof, whether developed, undeveloped or partially developed, and whether now equipped and operating or not and wherever situated, and all property acquired for use in connection therewith, including towers, poles, machinery, equipment, appliances and devices, appurtenances and supplies, buildings and other structures, and all the company's lands on which the same are situated and whether now owned or hereafter acquired, and also all rights of way, easements, permits, franchises and privileges owned, used or enjoyed in connection therewith, whether now owned or hereafter acquired.

THIRD.

Electric Transmission Lines, etc.

The electric transmission lines of the company, including the towers, poles, pole lines, wires, switch racks, insulators and other appliances and equipment, and all other property, real, personal or mixed, forming a part thereof, or appertaining thereto, together with all rights of way, easements, permits, privileges, municipal or other franchises, consents, licenses and rights, for or relating to the construction, maintenance or operation thereof, through, over, under or upon any public streets or highways or other lands, public or private, including the following situated in the Commonwealth of -----: (Here follows detailed description).

And also all extensions, branches, taps, developments and improvements of said transmission lines, or any of them, and all other transmission lines wherever situated, whether connected or not connected with any of the foregoing transmission lines, or whether now owned or hereafter acquired, as well as all rights-of-way, easements, permits, privileges, rights and municipal or

other franchises, licenses and consents for or relating to the construction, maintenance or operation of said lines, or any of them, or any part thereof under or upon any public streets or highways or any public or private lands.

FOURTH.

Electric Distributing Systems, etc.

The electric distributing systems of the company, including towers, poles, wires, insulators and appurtenances, appliances, devices and equipment, and all the company's other property, real, personal or mixed, forming a part of or used, occupied or enjoyed in connection with or in anywise appertaining to said distributing systems, or any of them, together with all rights-of-way, easements, permits, privileges, municipal or other franchises, licenses, consents and rights for or relating to the construction, maintenance or operation thereof through, over, under or upon any public streets or highways, or public or private lands, including the following situated in the Commonwealth of -----: (Here follows detailed description).

And also all branches, extensions, improvements and developments of or appertaining to or connected with said distributing systems, or any of them, and all other distributing systems of the company and parts thereof wherever situated, whether connected or not connected with any of the foregoing distributing systems, and whether now owned or hereafter acquired, as well as all rights-of-way, easements, privileges, permits, municipal or other franchises, consents and rights for or relating to the construction, maintenance or operation thereof, or any part thereof, through, over, under or upon any public streets or highways or public or private lands.

FIFTH.

Gas Manufacturing Plants and Plant Sites.

The gas manufacturing plants and plant sites of the company, including all gas holders, expansion tanks, gas mains, buildings and structures, and the land of the company on which the same are situated, and all the company's lands and easements, rights of way, rights, permits, privileges, licenses, machinery, engines, equipment, appliances, appurtenances and supplies forming a part of said plant or sites, or any of them, or used or enjoyed or

capable of being used or enjoyed in connection therewith, including the following situated in the Commonwealth of-----: (Here follows detailed description).

Also all other gas manufacturing plants and plant sites, or parts thereof, whether developed or undeveloped or partially developed, and whether now equipped and operating or not, and wherever situated, and property acquired for use in connection therewith; machinery, gas holders, expansion tanks, gas mains, buildings and structures, and all the company's land on which the same are situated, and whether now owned by the company or hereafter acquired; and also all rights of way, easements, permits, franchises and privileges owned, used or enjoyed in connection therewith, whether now or hereafter acquired.

SIXTH.

Gas Distributing Systems.

The gas distributing systems of the company including all gas holders, expansion tanks, tunnels, conduits, gas mains and pipes, service pipes, fittings, gates, valves, connections, meters and all appurtenances, appliances, devices and equipment, and all the company's other property, real, personal or mixed, forming a part of or used, occupied or enjoyed in connection with, or in any wise appertaining to said distributing systems or any of them, together with all rights-of-way, easements, permits, privileges, municipal or other franchises, licenses, consents and rights for or relating to the construction, maintenance or operation thereof, through, over, under or upon any public streets or highways or any public or private lands, including the following situated in the Commonwealth of-----: (Here follows detailed description).

And also all branches, extensions, improvements and developments of, or appertaining to or connected with, said gas distributing systems, or any of them, and all other gas distributing systems, of the company, and parts thereof, wherever situated, whether connected or not connected with any of the foregoing distributing systems, and whether now owned or hereafter acquired, as well as all rights of way, easements, privileges, permits, municipal or other franchises, consents and rights for or relating to the construction, maintenance or operation thereof, or any part thereof, through, over, under or upon any public streets or highways or public or private lands.

SEVENTH.

Telephone Lines.

All telephone lines of the company, used or available for use in the operation of its other properties or otherwise, as now or hereafter located, constructed and equipped in the Commonwealth of-----, or elsewhere, together with the wires, towers, poles, structures, insulators, ground wires, supports and other appliances, and all other property forming a part of or appertaining to such telephone systems, lines or wires, or any other telephone lines of the company, as the same are now or hereafter may be located, constructed and equipped, as well as all rights of way, easements, permits, consents, privileges, franchises and rights for, or relating to the construction, maintenance or operation of such telephone lines, or any part thereof, through, over, under or upon any public streets or highways or public or private lands.

EIGHTH.

General and After-Acquired Property Clauses.

All other property, real, personal and mixed (except shares of stock, bonds and securities not specifically pledged hereunder now owned or hereafter acquired by the company and wheresoever situate, including (without in anywise limiting or impairing by the enumeration of the same the scope and intent of the foregoing or any general description contained in this indenture) all lands, rights-of-way, water rights and flooding rights, ditches, flumes, races, reservoirs, canals, tunnels, dams, aqueducts, and all power houses, dwelling houses, storage houses, office buildings and other buildings and structures; all power and gas sites and building sites, machinery, engines, boilers, dynamos, electric and gas machines, regulators, meters, transformers, generators, motors, electrical, gas and mechanical appliances, conduits, cables, water, gas or other pipes, gas mains and pipes, service pipes, fittings, valves and connections, pole and transmission lines, wires, tools, implements, apparatus, supplies, merchandise, furniture, chattels, contracts, agreements, demands, accounts and choses in action; all state, municipal and other franchises, consents and permits; all real estate, lands, leases, leaseholds; all rights by lease or otherwise in and to property, real, personal or mixed, including all property leased to----- Electric Light & Power Company by ---- Electric Light Company by

lease dated _____, and all other property held under any other lease, leases, agreement or agreements, and including all the company's right, title and interest in and to the property held by _____ Transit Company under the contract of conditional sale made between _____ Power Company and said _____ Transit Company, dated _____, subject, however, to the terms and conditions of said contract; and the tolls, rents, revenues, issues, earnings, income and profits from any and all property of the company.

Together with all and singular the tenements, hereditaments and appurtenances belonging or in any wise appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders, tolls, rents, revenues, issues, income, product and profits thereof, and all the estate, right, title and interest and claim whatsoever, at law as well as in equity, which the company now has or may hereafter acquire in and to the aforesaid property and franchises and every part and parcel thereof.

It is hereby agreed that all the property, rights and franchises acquired by the company after the date hereof (except property herein specifically excepted) shall be as fully embraced within the lien hereof as if such property were now owned by the company and were specifically described herein and conveyed hereby.

Habendum.

To have and to hold all said properties, real, personal and mixed, mortgaged, pledged or conveyed by the company as aforesaid, or intended so to be, unto the Trustee and its successors and assigns forever.

Grant in Trust.

In Trust nevertheless, upon the terms and trusts herein set forth, for those who shall hold the bonds and coupons issued and to be issued hereunder, or any of them, without preference of any of said bonds and coupons over any others thereof by reason of priority in the time of the issue or negotiation thereof, or otherwise howsoever.

Defeasance Clause.

Provided, however, and these presents are upon the condition that if the company, its successors or assigns, shall pay or cause

to be paid unto the holders of said bonds, the principal and interest to become due in respect thereof, at the times and in the manner stipulated therein and herein, and shall keep, perform and observe all and singular the covenants and promises in said bonds and in this Indenture expressed as to be kept, performed and observed by or on the part of the company, then this Indenture and the estate and rights hereby granted shall cease, determine and be void, otherwise to be and remain in full force and effect.

It is hereby covenanted, declared and agreed by and between the parties hereto that all such bonds and coupons are to be issued, authenticated and delivered, and that all property subject or to become subject hereto is to be held subject to the further covenants, conditions, uses and trusts hereinafter set forth, and the company, for itself and its successors and assigns, doth hereby covenant and agree to and with the Trustee and its successor or successors in said trust, for the benefit of those who shall hold said bonds and interest coupons, or any of them, as follows:

ARTICLE I.

Definitions.

Section 1. The terms specified in the next succeeding twelve sections hereof, numbered from 2 to 13, both inclusive, shall, for all purposes of this Indenture, have the meanings in such sections specified.

"The Company," "The Trustee," Other Terms.

Section 2. The term "the Company" shall mean the party of the first part hereto, -----Power & Light Company, and shall also include its successors and assigns. The term "the Trustee" shall mean the party of the second part hereto, -----Trust Company of New York, and shall also include its successors and assigns. The terms "the lien hereof" and "the lien of this Indenture" shall mean the lien created by these presents (including the after-acquired property clauses hereof) and the lien created by any subsequent conveyance to the Trustee hereunder (whether made by the company or any other individual, copartnership or corporation) effectively constituting any property a part of the security held by the Trustee upon the terms and trusts and subject to the conditions specified in this Indenture.

"Resolution." "Engineer." "Engineer's Certificate."

"Independent Engineer's Certificate." "Opinion of Counsel."

Section 3. The term "resolution" shall mean a resolution certified by the Secretary or an Assistant Secretary of the company to have been duly adopted by the Board of Directors or the Executive Committee of the company. The term "engineer" shall mean an individual or a co-partnership or a corporation engaged in an engineering business. The term "engineer's certificate" shall mean a certificate signed and verified by the President or a Vice-President of the company and by an engineer (who may be an employee of the company) appointed by the Board of Directors or Executive Committee of the company and approved by the Trustee. The term "independent engineer's certificate" shall mean a certificate signed and verified by an engineer appointed by the Trustee and approved by the Board of Directors or Executive Committee of the company. The term "opinion of counsel" shall mean an opinion in writing signed by counsel (who may be of counsel to the company) appointed by the Board of Directors or Executive Committee of the company and approved by the Trustee.

"Underlying Bonds."

Section 4. The term "underlying bonds" shall mean bonds secured by any of the mortgages specified in Section 32 hereof and the term "underlying mortgage" shall mean any such mortgage.

"Prior Liens."

Section 5. The term "prior liens" shall mean mortgage or other liens prior or equal to the lien of this Indenture, existing upon any permanent additions as hereinafter in Section 6 defined, excepting at any time the lien of (a) taxes for the then current year, (b) underlying mortgages, and (c) mortgages upon permanent additions in any particular case of a value not exceeding one hundred thousand dollars (\$100,000) at the time of acquisition, the release of which from such mortgage cannot be obtained without the payment of an amount which together with the amount otherwise paid would be in excess of the fair value of such permanent additions.

"Permanent Additions."

Section 6. The term "permanent additions" shall mean plants, properties, permanent improvements, extensions or additions acquired or constructed by the company subsequent to September 25, 1920, and subjected to the lien of this Indenture (except properties owned by-----Industrial Power Company on September 25, 1920), to be used in the business of generating, manufacturing, distributing or supplying light or power by means of electricity or light, power or heat by means of gas, and located in one or more of the states of-----

Permanent improvements, extensions or additions in process of construction or erection in so far as actually constructed or erected and paid for and subjected to the lien of this Indenture, shall be deemed permanent additions. The term permanent additions shall not include any shares of stock, bonds or other securities or franchises, contracts or choses in action or any property acquired or constructed by the company for the purpose of keeping or maintaining the mortgaged property in good and business-like working order and condition or merely to replace old, inadequate or worn out property; provided, however, that whenever old, inadequate or worn-out property is replaced by property costing more than the original cost to the company of such old, inadequate or worn-out property, then to the extent of such excess, and to such extent only, such property so acquired to replace the old, inadequate or worn-out property shall be deemed permanent additions. The term "permanent additions" shall include hydro-electric properties, whether or not owned, acquired or constructed by the company, subjected to the lien of this Indenture by the owner.

"Gas Properties."

Section 7. The term "gas properties" shall mean permanent additions to be used in the business of generating, manufacturing, distributing or supplying light or power or heat by means of gas.

"New Plants or Power Houses."

Section 8. The term "new plants or power houses" shall mean new or additional systems, plants or power houses.

"Disconnected Properties."

Section 9. The term "disconnected properties" shall mean new plants or power houses, not physically connected, by transmission or service or supply lines or otherwise, with some plant or system subject to the lien hereof at the date of the execution and delivery of this Indenture.

"New Lines and Systems."

Section 10. The term "new lines and systems" shall mean new or additional transmission lines or distributing or service or supply systems including all extensions into other townships, boroughs or cities of transmission lines or distributing or service or supply systems theretofore subject to the lien of this Indenture but not including any other extensions of transmission lines or distributing or service or supply systems theretofore subject to the lien of this Indenture.

"Short Term Franchise Properties."

Section 11. The term "short term franchise properties" shall mean any new lines and systems (as defined in Section 10 above) operated under a franchise necessary for the operation thereof of which franchise the duration is neither (a) unlimited nor (b) such that it cannot be terminated without the consent of the owner before February 1, 1961, except upon the owner's default or upon condemnation or upon payment of compensation for all of the property the operation of which is dependent upon such franchise.

"Net Earnings Certificate."

Section 12. The term "Net Earnings Certificate" shall mean a certificate signed and verified by the President or a Vice President, and the Treasurer or an Assistant Treasurer of the company, stating in detail the net earnings of the company for a specified period, and to that end specifying the operating and non-operating revenues with the principal divisions thereof. The term "Net Earnings" shall mean the amount remaining after deducting from the operating and non-operating revenues of the company, all operating expenses of the company, including taxes, rentals, insurance, municipal percentages of earnings and reasonable charges for current repairs and maintenance. Reasonable charges for current repairs and maintenance shall not include

charges for depreciation, and shall be deemed to be either, (a) an amount equal to two and one-half per cent ($2\frac{1}{2}\%$) of the aggregate of the principal amount of all bonds outstanding under this Indenture at the close of the period for which net earnings are computed and all underlying bonds as defined in section 4 hereof then outstanding (except such underlying bonds as shall have been made the basis of the authentication and delivery of bonds under Section 32 hereof) and all bonds secured by mortgages constituting prior liens, or (b) the actual amount of such charges for current repairs and maintenance, whichever is greater. Of the income of the company included in net earnings not more than five per cent (5%) in the aggregate may consist of (a) net non-operating income and/or (b) net operating income derived from sources other than the operation of electric light and power and gas properties subject to the lien hereof, except that the net earnings of any properties held by the company as lessee under lease made by -----Electric Light Company to-----Electric Light and Power Company, dated January 26, 1900, may be included as if they were net earnings derived from the electric light and power properties subject to the lien hereof, and after the termination of said -----Electric Light Company lease, net earnings in the aggregate to the extent of one hundred thousand dollars (\$100,000) during the specified period from other electric light and power or gas properties, held by the company as lessee under a lease which shall have been specifically subjected to the lien hereof, may be so included. If any of the property of the company owned by it at the time of the making of any net earnings certificate shall have been owned by it during only a part of any period for which net earnings are to be computed, the net earnings of such property during such part of such period as shall have preceded the acquisition thereof by the company may at the option of the company be treated as net earnings of the company for the purposes of this section. The net earnings derived from the operation of hydro-electric properties subject to the lien hereof, whether owned by the company or not, shall be deemed net earnings of the company; provided, however, that in computing net earnings there shall be eliminated all inter company revenues or expenses between the company and any hydro-electric property, subject to the lien hereof, affecting such net earnings.

ARTICLE II.

Form and Execution of Bonds.**Series, Designations, Variations in Form and Language of Bonds.**

Section 13. At the option of the company, the bonds issued hereunder may be issued in one or more series. Each series shall have such distinctive designation as the Board of Directors of the company may select for such series, and each bond issued hereunder shall bear upon the face thereof the designation so selected for the series to which it belongs. All the bonds to be issued under this Indenture, together with the coupons appertaining thereto, shall be expressed in the English language; but they, or any of them, may also, at the election of the Board of Directors of the company, be expressed in one or more foreign languages, but in every such case the English text shall govern in the construction thereof, and both or all texts shall constitute but a single obligation. The form of each series of bonds issued hereunder shall be established by resolution of the Board of Directors of the company, provided, however, that subject to the exceptions contained in the ten next succeeding sections numbered from 14 to 23, both inclusive, the English text of the coupon bonds and of the registered bonds without coupons to be issued under this Indenture, and of the coupons appertaining to the coupon bonds, and of the certificate of the Trustee upon all bonds, shall be respectively substantially of the tenor and purport above recited.

Series A.

Section 14. There shall be a series of bonds known as Series A and the form thereof shall contain suitable provisions with respect to the matters hereinafter in this Section 14 specified. Bonds of the principal amount of eight million dollars (\$8,000,000) shall constitute all the bonds of Series A; they shall be dated February 1, 1921, and shall mature February 1, 1951, shall be issued as coupon bonds in denominations of one thousand dollars, and five hundred dollars, registerable as to principal, and as registered bonds without coupons in denominations of one thousand dollars, and five thousand dollars; they shall bear interest at the rate of seven per centum (7%) per annum, payable semi-annually on February 1 and August 1 of each year; both principal and interest to be payable at the office or agency of the Company in the City of _____, in United States gold coin of

or equal to the standard of weight and fineness existing on February 1, 1921, without deduction either from principal or interest on account of any tax or governmental charge (other than succession and inheritance taxes and such portion of any Federal income tax as shall be in excess of 2%) which the company or the trustee may be required or permitted to pay thereon or to retain therefrom by virtue of any present or future law or requirement of the United States of America, or of any state, county, municipality or other taxing authority therein, including specifically any and all taxes imposed by or for the benefit of the Commonwealth of _____ under the laws thereof, upon any such bond or upon the holder as a resident thereof, not in excess of four mills per annum on each dollar of the face amount of such bond. Series A bonds shall be redeemable at the option of the company as a whole or in any part on any interest payment date before maturity at the principal amounts thereof and accrued interest to the date of redemption, together with a premium of seven and one-half per cent ($7\frac{1}{2}\%$) if redeemed on or before February 1, 1922, and, if redeemed after February 1, 1922, together with a premium of seven and one-half per cent ($7\frac{1}{2}\%$) less one-quarter ($\frac{1}{4}$) of one per cent (1%) for each full year elapsed since February 2, 1921. At the option of the holder, any coupon bonds of Series A in denominations of \$500 and/or \$100 (if the company shall hereafter elect to issue coupon bonds of Series A of the denomination of \$100) in aggregate principal amounts of \$1,000, upon surrender thereof with all unmatured coupons attached at the office of the Trustee in the City of _____

_____, shall be exchangeable for a coupon bond of the denomination of \$1000 of the same series with all unmatured coupons attached. At the option of the holder, any coupon bonds of Series A in aggregate principal amounts of \$1000 or any multiple thereof, upon surrender thereof with all unmatured coupons attached at the office of the Trustee in the City of _____, shall be exchangeable for a like aggregate principal amount of registered bonds without coupons of the same series. At the option of the registered holder, any registered bonds without coupons of Series A, upon surrender thereof at said office of the Trustee together with a written instrument of transfer in form approved by the company duly executed by the registered holder, shall be exchangeable for a like aggregate principal amount of coupon bonds in denominations of \$1,000 of the same series, with

all unmatured coupons attached, or for a like principal amount of registered bonds without coupons of the same series of the other denomination. The company, at its option, may at any time permit the exchange of coupon bonds of Series A of the denomination of \$1,000, for coupon bonds of the same series of a lower denomination for a like aggregate principal amount.

Payment in Foreign Country and in Foreign Money.

Section 15. At the option of the company the principal and interest of any series of bonds to be issued hereunder (other than Series A bonds), payable in the City of-----, in United States gold coin, may be made payable also at the holder's option at such place or places in the United States of America, or in foreign countries, and, in the case of foreign countries, in the money of such country or countries, at such reasonable fixed rate or rates of exchange as shall be set forth in such bonds.

Section 16. At the option of the company, the principal and interest of any series of bonds to be issued hereunder, other than Series A bonds, may be made payable only at such place or places in a foreign country and in such fixed amount or amounts in foreign money, as may be set forth in such bonds.

Registration in Foreign Country.

Section 17. At the option of the company, provision may be made in the bonds of any series payable in foreign country for registration at such place or places in such foreign country as the company may designate in such bonds.

Tax Free Provisions.

Section 18. At the option of the company, provision may be made in any series of bonds for the payment of the principal or interest thereof or both without deduction for taxes. Such provision may be limited to taxes imposed by any taxing authorities of a specified class and may exclude from its operation any specified tax or taxes; provided, however, that the provisions of the bonds of Series A with respect to payment without deduction for taxes shall be in accordance with the requirements of Section 14 hereof. In cases in which any provision permitted by this section shall be made in any bond, an appropriate insertion may be made in the coupons annexed thereto.

Dates, Rates of Interest and Redemption Provisions.

Section 19. The dates of issue, dates of maturity and rates of interest of the bonds of each series issued hereunder from time to time and the terms and conditions, if any, upon which the company may redeem any of such bonds before maturity shall be such as may be designated in the form established for such series in accordance with the provisions of Section 13 hereof. The dates of maturity of bonds issued hereunder shall in no event be later than February 1, 1961.

Conversion Into Capital Stock.

Section 20. The Company may, in any series of bonds, other than Series A, stipulate and agree that the principal of such bonds may be converted, at the option of the holders, into the capital stock of the Company, of any class, upon such terms and conditions as the Board of Directors may determine and may cause appropriate insertions to be made in the text of such bonds for the purpose of stating such agreement with respect to conversion and the terms and conditions thereof.

Registered and Coupon Bonds.

Section 21. Subject to the provisions of Section 14 hereof with respect to bonds of Series A, any series of bonds issued pursuant to the provisions of this Indenture may, at the election of the Company, be executed, authenticated and delivered originally either as coupon bonds or as registered bonds without coupons, except that all bonds of denominations of one hundred dollars or five hundred dollars shall be issued only as coupon bonds. Coupon bonds may be issued in denomination of one thousand dollars, five hundred dollars and one hundred dollars. Registered bonds without coupons may be issued in denominations of one thousand dollars and multiples thereof as the Board of Directors of the Company may from time to time authorize.

Date of Registered Bonds.

Section 22. Every registered bond without coupons shall be dated as of the time of issue (except that if any registered bond shall be issued upon any interest payment date, it shall be dated as of the day following) and shall bear interest from the interest payment day next preceding such date and may have imprinted thereon a legend or legends containing such specifications in the premises as may be required to comply with the rules of any stock exchange or to conform to usage with respect thereto.

Exchangeability of Bonds.

Section 23. Subject to the provisions of section 14 hereof with respect to the bonds of Series A, the bonds of any series, at the option of the company, may contain provisions permitting any or all of the exchanges hereinafter in this Section 23 specified, viz.: Exchanges of coupon bonds for registered bonds; exchanges of registered bonds for coupon bonds; exchanges of coupon bonds for coupon bonds of other denominations; exchanges of registered bonds for registered bonds of other denominations; and exchanges of bonds of one series for bonds of another series of the same or later maturity. Such privileges of exchange may in any case be made subject to any conditions, limitations or restrictions which the company shall cause to be specified in the bond so made exchangeable, and the privilege of exchange may in any case be conferred upon the holders of bonds of one or more denominations and withheld from the holders of bonds of other denominations of the same series. Any bond made exchangeable for another bond or bonds in accordance with the provisions of this section may have imprinted thereon a legend or legends containing such specifications in the premises as may be necessary to comply with the rules of any Stock Exchange or to conform to usage with respect thereto.

Manner of Exchange and Charges Therefor.

Section 24. In all cases of exchanges of bonds contemplated by the next preceding section hereof, the bonds to be exchanged shall be surrendered at the office of the Trustee in the City of -----, with all unmatured coupons attached (in the case of coupon bonds) and the company shall execute and the Trustee shall authenticate and deliver in exchange therefor the bond or bonds which the bondholder making the exchange shall be entitled to receive. All bonds so surrendered for exchange and the coupons attached thereto shall be cancelled by the Trustee and delivered to the company. Upon every exchange of bonds, the company may make a charge therefor sufficient to reimburse it for any tax or taxes or other governmental charge required to be paid by the company and in addition may charge a sum not exceeding two dollars (\$2) for each bond issued upon any such exchange which shall be paid by the party requesting such exchange as a condition precedent to the exercise of the privilege for making such exchange. The company shall not be

required to make exchanges of bonds for a period of ten (10) days next preceding any interest day.

Bonds for Registration and Transfer of Bonds.

Section 25. The Company shall keep at its office or agency in the-----, City of-----, and at such other place or places, if any, as shall be designated in any bond issued hereunder, books for the registration and transfer of bonds issued hereunder, which, at all reasonable times, shall be open for inspection by the Trustee or by the holder of any bonds issued hereunder; and, upon presentation for such purpose at any such office, the Company will register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as it may prescribe, any bonds issued under this Indenture and entitled to registration or transfer at such office. Upon the transfer of any registered bond without coupons the Company shall issue in the name of the transferee or transferees a new registered bond or new registered bonds of like form and the Trustee shall authenticate and deliver the same to him or them. The Company shall not be required to make transfer of bonds as provided in this Section for a period of ten days next preceding any interest day.

Execution, Authentication and Delivery of Bonds.

Section 26. All bonds issued hereunder shall, from time to time, be executed on behalf of the company by its President or one of its Vice Presidents and its corporate seal shall be thereunto affixed and attested by its Secretary or one of its Assistant Secretaries. The coupons to be attached to coupon bonds shall bear the engraved facsimile signature of the present or any future Treasurer of the company. In case any of the officers who shall have signed any bonds or attested the seal thereon, shall cease to be such officers of the company before the bonds so signed and sealed shall have been actually authenticated by the Trustee or delivered by the company, such bonds nevertheless may be issued, authenticated and delivered with the same force and effect as though the person or persons who signed such bonds and attested the seal thereon had not ceased to be such officer or officers of the company. Before authenticating any coupon bonds the Trustee shall cut off, cancel and deliver to the company all matured coupons thereto attached.

Temporary Bonds May Be Issued.

Section 27. Until definitive bonds are ready for delivery, there may be authenticated and delivered and issued in lieu of any thereof, temporary printed, lithographed or typewritten bonds in bearer form substantially of the tenor of the bonds hereinbefore described, except that no coupons shall be attached thereto, and that such temporary bonds may be in such denominations as the company may determine. Until exchanged for definitive bonds, such temporary bonds shall be entitled to the lien and benefit of this Indenture. Upon such exchange, which the company shall make without any charge therefor, such temporary bonds shall be destroyed by the Trustee, and upon the exchange of all said bonds a certificate of such destruction shall be delivered to the company. When and as interest is paid upon temporary bonds, the fact of such payment shall be noted thereon. Until such definitive bonds are ready for delivery, the holder of one or more temporary bonds may exchange the same on the surrender thereof to the Trustee for cancellation, and shall be entitled to receive temporary bonds of like aggregate principal amount of other denominations.

Replacing Bonds Mutilated, Destroyed or Lost.

Section 28. Upon receipt by the Company and the Trustee of evidence satisfactory to them, of the loss, destruction or mutilation of any outstanding bond hereby secured, and of indemnity satisfactory to them, and upon surrender and cancellation of such bond if mutilated the Company may execute, and the Trustee may authenticate and deliver, a new bond of like tenor and of the same series, bearing the same serial number, to be issued in lieu of such lost, destroyed or mutilated bond.

Trustee's Certificate.

Section 29. Subject to the qualifications hereinbefore set forth, the bonds and coupons to be secured hereby shall be substantially of the tenor and effect hereinbefore recited, and no bonds shall be secured hereby unless there shall be endorsed thereon the certificate of the Trustee, substantially in the form hereinbefore recited, that it is one of the bonds (or temporary bonds) herein described; and such certificate on any such bond shall be con-

clusive evidence that such bond has been duly authenticated and delivered and is secured hereby.

Foreign Bonds—Rates of Equivalences.

Section 30. In case of the issue of bonds payable in foreign money only, for the purpose solely of ascertaining the amount of bonds which the company shall be entitled, from time to time and in the aggregate, to have issued or to redeem or purchase under the provisions of this Indenture, or whenever it is necessary to compute the amount of bonds outstanding hereunder, such reasonable equivalents as shall be determined by the Board of Directors of the company at the time of authorizing the issue of bonds in any such currency and expressed in such bonds, shall be deemed to be the equivalent of one thousand dollars, five hundred dollars or one hundred dollars, as the case may be. No coupon bond payable in foreign money shall be issued for an amount which at such rate or rates of equivalence would exceed one thousand dollars.

ARTICLE III.

Initial and Refunding Issues of Bonds.

\$8,000,000 of Bonds Issuable Immediately.

Section 31. Bonds for the aggregate principal amount of Eight Million Dollars (\$8,000,000), being the bonds of Series A hereinbefore described, shall forthwith be executed by the company and delivered to the Trustee and shall be authenticated by the Trustee, and delivered (whether before or after the filing or recording hereof), from time to time, in accordance with the order or orders of the company, evidenced by a writing or writings signed by its President or a Vice President and its Treasurer or an Assistant Treasurer, and upon the deposit with the Trustee of the cash required by Section 51 hereof.

\$12,329,600 Issuable Upon Deposit of Underlying Bonds.

Section 32. Bonds up to but not exceeding an aggregate principal amount of Twelve Million, Three Hundred and Twenty-nine Thousand Six Hundred Dollars (\$12,329,600) may from time to time be executed by the company and delivered to the Trustee and

shall be authenticated by the Trustee and delivered to the company against and upon the deposit with the Trustee by the company to be held by the Trustee under the terms and conditions of this Indenture of an equal principal amount of any of the following described underlying bonds:

Provided, however, that each such underlying bond when deposited with the Trustee shall have all unmatured coupons attached (or shall be accompanied by evidence satisfactory to the Trustee that the Trustee under the mortgage securing such bonds will discharge the same without the production of any coupon or coupons that may be missing) and shall be uncanceled, or if canceled shall be accompanied by the certificate of the Trustee under the mortgage by which it was secured, to the effect that it has been canceled subsequent to September 25, 1920, under the sinking fund provisions of such mortgage or at maturity upon payment of the principal thereof. Provided further, that in lieu of depositing any underlying bonds with the Trustee, the company may deliver to the Trustee the certificate of the Trustee under the mortgage by which such underlying bond is secured, to the effect that such underlying bond has been acquired by operation of the sinking fund provisions of such mortgage, upon or before the date of such certificate and is held by such Trustee uncanceled in such sinking fund in accordance with the requirements of such mortgage. The Trustee shall stamp upon each underlying bond so deposited with it an appropriate legend to the effect that such underlying bond is no longer negotiable. The Trustee may cause to be transferred into its name, as Trustee hereunder, all registered bonds which shall have been deposited with it hereunder.

Rights of Trustee in Respect of Underlying Bonds.

Section 33. All uncanceled underlying bonds received by the Trustee shall be held by the Trustee without impairment of the lien thereof for the protection and further security of the bonds issued hereunder. Until default of the character specified in Section 90 of this Indenture, and its continuance for the period, if any, therein specified, no payment by way of interest or otherwise, on any of the underlying bonds held subject to the lien of this Indenture shall be made or demanded, and the coupons there-

to appertaining as they mature shall be canceled by the Trustee and delivered so canceled to the company, but upon the happening of any such default the Trustee may exercise any and all rights of a bondholder with reference to any underlying bonds then held by it, or may take any other action which shall in its judgment be desirable or necessary to avail of the security created for such bonds by the mortgage securing the same, and shall be reimbursed from the trust estate for all expenses by it properly incurred by reason of any such action taken, with interest upon all such expenditures at the rate of six percentum per annum; and the amount of such expenses and interest shall, until repaid, constitute a lien upon the mortgaged premises prior to the lien of these presents.

Discharge of Underlying Mortgages.

Section 34. Whenever all of said underlying bonds of any of said issues (except any lost or destroyed bonds for which satisfactory indemnity shall have been given and as to which indemnity the Trustee shall have received the certificate of the Trustee under the mortgage securing said underlying bonds) shall have been deposited as aforesaid in exchange for bonds issued hereunder, or otherwise pledged hereunder, or shall have been paid in full, both principal and interest, and delivered by or on behalf of the company to the Trustee, the Trustee shall cancel all underlying bonds of such issue so deposited or paid, and shall cause the mortgage or trust deed securing the same to be discharged, and all the mortgaged premises and property embraced therein to be released from such mortgage or trust deed; provided, however, that no underlying mortgage shall be canceled and discharged at any time, if there shall be then outstanding any other underlying bonds secured by mortgage upon the same property, junior to the lien of such underlying mortgage. The Trustee may accept an opinion of counsel (as defined in Section 3 hereof) as to the existence of any other such underlying mortgage. Upon the satisfaction and discharge of record of the mortgage or mortgages or deed or deeds of trust securing any issue of said underlying bonds, the Trustee shall, when and as called for by the company, authenticate and deliver to it the total amount of bonds secured hereby reserved under the provisions of Section 32 hereof, for the refunding of such issue of underlying bonds, less such an amount of bonds as shall have theretofore been issued hereunder upon

the basis of underlying bonds of the same issue as hereinbefore provided.

Redemption of Underlying Bonds.

Section 35. The company may, however, at any time, should it deem it desirable, call and redeem all the outstanding underlying bonds of any of said issues (provided, there shall not be then outstanding any underlying bonds secured by mortgage upon the same property, junior to the lien of such underlying mortgage) and thereupon, upon presentation to the Trustee of evidence satisfactory to it of the calling of all of the underlying bonds of said issue for redemption in accordance with the provisions of the mortgage securing the same, and of the deposit with the Trustee under the mortgage securing such underlying issue of cash to an amount sufficient to redeem all of the outstanding bonds of said issue which shall not at such time have been deposited hereunder, the Trustee shall forthwith, on request of the company, deliver, or cause to be delivered, to the Trustee under the mortgage securing said issue, all of the bonds and coupons of said issue then held by the Trustee hereunder, for cancellation without requiring any payment to be made on account of the principal or interest thereof, and shall forthwith authenticate and deliver to the company the total amount of bonds secured hereby reserved under the provisions of Section 32 hereof for the refunding of such issue of underlying bonds, less such an amount of bonds and shall have theretofore been issued hereunder upon the basis of underlying bonds of the same issue as hereinbefore provided.

No More Underlying Bonds to Be Authenticated and Delivered.

Section 36. The company covenants and agrees that no underlying bonds of any of the issues mentioned above shall be authenticated and delivered or issued after the execution and delivery of this Indenture except in lieu of lost, destroyed or mutilated bonds or upon transfers or exchanges of bonds, and that the aggregate principal amount of all underlying bonds now outstanding does not exceed the amounts heretofore set forth in the habendum clauses of this Indenture and, that forthwith upon the acquisition by it, free from lien, of any underlying bonds now outstanding, it will deposit and pledge the same with the Trustee as additional security hereunder.

ARTICLE IV.

**Issuance of Bonds Upon the Basis of Permanent Additions.
Additional Bonds Issuable From Time to Time.**

Section 37. Additional bonds may from time to time be executed by the company and delivered to the Trustee and shall be authenticated by the Trustee and delivered from time to time to the company upon the basis of the acquisition or construction of permanent additions. Such additional bonds, however, shall be authenticated and delivered only in accordance with and subject to the conditions, provisions and limitations set forth in the next succeeding nine sections of this Indenture numbered from 38 to 46, both inclusive.

Property Against Which Bonds May Not Be Issued.

Section 38. No bonds shall be authenticated and delivered at any time under the provisions of this Article IV or cash withdrawn under any of the provisions of this Indenture upon the basis of the acquisition or construction of (a) any property not included within the definition of "permanent additions" contained in Section 6 hereof, or (b) any property which has not been or is not simultaneously with the issuance of bonds or withdrawal of cash applied for, subjected to the lien hereof, or (c) any property which has previously been made the basis for the authentication and delivery of bonds or withdrawal of cash (unless such cash shall have been replaced under the provisions of Section 71 hereof) under any provision of this Indenture or the release of property under the provisions of Article X hereof, or, (d) any property acquired as substituted property with cash proceeds, which have at no time been deposited with the Trustee hereunder, of insurance or of property theretofore subject to the lien hereof, sold or taken by eminent domain.

Limitation on Issuance of Bonds and Withdrawal of Cash Against Gas Properties.

Section 39. The Trustee shall not grant any application for the authentication and delivery of bonds or withdrawal of cash upon the basis of the acquisition or construction of gas properties at any time prior to February 1, 1926, if, at such time, the aggregate principal amount of all bonds theretofore authenticated and delivered under the provisions of this Article IV upon the basis of the acquisition or construction of gas properties plus the total

amount of cash theretofore withdrawn upon such basis under Section 49 hereof together with any bonds applied for or cash applied for under Section 49 upon the basis of the acquisition or construction of gas properties shall exceed eight per centum (8%) of the aggregate principal amount of all bonds authenticated and delivered hereunder up to the date of such application including those applied for (except bonds authenticated and delivered under the provisions of Section 47 hereof), or, at any time on and after February 1, 1926, if at such time the aggregate principal amount of all bonds authenticated and delivered under the provisions of this Article IV on and after February 1, 1926, upon the basis of the acquisition or construction of gas properties plus the total amount of cash withdrawn upon such basis under Section 49 hereof on and after February 1, 1926, together with any bonds applied for or cash applied for under Section 49 upon the basis of the acquisition or construction of gas properties shall exceed five per centum (5%) of the aggregate principal amount of all bonds authenticated and delivered hereunder on and after February 1, 1926, and up to the date of such application including those applied for (except bonds authenticated and delivered under the provisions of Section 47 hereof).

Limitation on Amount of Bonds Issuable.

Section 40. The Trustee shall authenticate and deliver bonds under this Article IV only for an amount of principal equal to seventy-five per centum (75%) of the actual cash cost or fair value (whichever is less) of any such permanent additions as are not subject to prior liens. Except as hereinafter in this Section 40 provided, the Trustee shall authenticate and deliver bonds under this Article IV upon the basis of the acquisition or construction of such permanent additions as are subject to prior liens only for an amount of principal equal to the amount by which seventy-five per centum (75%) of the actual cash cost or fair value (whichever is less) thereof shall exceed the amount of all prior liens existing thereon (the amount of such prior liens to be included in such actual cash cost).

Payment or Reduction of Prior Liens.

Upon the paying off or reduction in amount of such prior liens existing upon any particular permanent additions, the company, by filing with the Trustee an engineer's certificate (as defined in

Section 3 hereof), to the effect that such prior liens have been paid or reduced and specifying the amount of the payment or reduction, accompanied by a concurring opinion of counsel (as defined in Section 3 hereof), shall entitle itself to the authentication and delivery of further bonds to a principal amount equal to the amount by which the principal amount of such prior liens is paid off or reduced, provided the limitations prescribed in this Section 40 shall not be exceeded.

Whenever the company shall file with the Trustee an engineer's certificate, accompanied by a concurring opinion of counsel, stating that with respect to any specified permanent additions proposed to be made the basis of the authentication and delivery of bonds or theretofore made the basis of the authentication and delivery of bonds, there exists any prior lien securing any indebtedness which cannot then satisfactorily be paid or discharged or the validity of which is disputed by the company, and stating the nature and amount thereof, the Trustee shall authenticate and deliver to the company the instalment of bonds to which the company would be entitled if such prior lien did not exist, provided that all other requirements with respect to the authentication and delivery of such bonds shall have been complied with by the company; and provided further that the company shall deposit with the Trustee an amount in cash which shall equal the face value of the indebtedness secured by such prior lien and such additional amount as the Trustee may require to cover interest and the costs and expenses of any litigation with respect thereto. The moneys so deposited with the Trustee with the interest thereon shall be held by it and applied to the payment of such prior lien if and when the validity thereof shall be established (if the validity is disputed), and such interest, costs and expenses, and on the cancellation of said prior lien, the money so deposited with the interest thereon, or, on the satisfaction thereof from such moneys, any balance that may remain therefrom, shall be repaid by the Trustee to the company; provided, sums deposited with the Trustee under the provisions of this however, that if at any time the company shall so direct, any section may be withdrawn in the same manner and for the same purposes (except for repairs, maintenance, renewals and replacements) and subject to the same conditions, as moneys in the Renewal and Improvement Fund provided for in Article VIII hereof.

No bonds shall be authenticated and delivered under any of the provisions of this Article IV or cash withdrawn under any of the provisions of this Indenture upon the basis of the acquisition or construction of any permanent additions subject to prior liens so long as such prior liens exceed in principal amount fifty per cent. (50%) of the cash cost or fair value of such permanent additions, whichever shall be less (including in such cash cost the amount of such prior liens); and the aggregate principal amount of all bonds at any time outstanding hereunder authenticated and delivered upon the basis of the acquisition or construction of permanent additions subject to prior liens, plus the total amount of cash theretofore withdrawn upon such basis under Section 49 hereof, shall at no time exceed twenty-five per cent. (25%) of the aggregate principal amount of all bonds at such time outstanding hereunder.

The Trustee shall assume that any prior liens existing upon permanent additions forming the basis of the authentication and delivery of bonds or withdrawal of money, have continued to exist until the Trustee shall have received a certificate of the President or a Vice-President of the company to the effect that such prior liens have been paid or reduced, specifying the amount of the payment or reduction, and accompanied by a concurring opinion of counsel.

Disconnected Properties.

Section 41. The Trustee shall not grant any application for the authentication and delivery of bonds or withdrawal of cash upon the basis of the acquisition or construction of disconnected properties, if, at the time, the aggregate principal amount of all bonds theretofore authenticated and delivered under the provisions of this Article IV upon the basis of the acquisition or construction of disconnected properties which shall have continued to be disconnected properties within the meaning of that term as defined in Section 9 hereof plus the total amount of cash theretofore withdrawn upon such basis under Section 49 hereof, together with any bonds applied for or cash applied for under Section 49 upon the basis of the acquisition or construction of disconnected properties, shall exceed five per centum (5%) of the aggregate principal amount of all bonds authenticated and delivered hereunder up to the date of such application including those applied for (except bonds authenticated and delivered under the provisions of Section 47 hereof).

The Trustee shall assume that any disconnected properties forming the basis of the authentication and delivery of bonds or the withdrawal of money have continued to be disconnected properties until the Trustee shall have received an engineer's certificate to the contrary.

Short Term Franchise Properties.

Section 42. The Trustee shall not grant any application for the authentication and delivery of bonds or withdrawal of cash upon the basis of the acquisition or construction of any short term franchise properties, if, at the time, the aggregate principal amount of all bonds theretofore authenticated and delivered under the provisions of this Article IV upon the basis of the acquisition or construction of short term franchise properties which shall have continued to be short term franchise properties within the meaning of that term as defined in Section 11 hereof, plus the total amount of cash theretofore withdrawn upon such basis under Section 49 hereof, together with any bonds applied for or cash applied for under Section 49, upon the basis of the construction or acquisition of short term franchise properties, shall exceed five per centum (5%) of the aggregate principal amount of all bonds authenticated and delivered hereunder up to the date of such application, including those applied for (except bonds authenticated and delivered under the provisions of Section 47 hereof).

The Trustee shall assume that any short term franchise properties forming the basis of the authentication and delivery of bonds or the withdrawal of money have continued to be short term franchise properties until the Trustee shall have received an engineer's certificate to the contrary.

Limitations On Amounts of Bonds of Early Maturity.

Section 43. The aggregate principal amount of bonds outstanding hereunder bearing dates of maturity earlier than those specified in other outstanding bonds authenticated and delivered prior to the authentication and delivery of such bonds of earlier maturity shall not at any time be so increased that it will exceed twenty per cent. (20%) of the aggregate principal amount of all bonds at such time outstanding hereunder.

Net Earnings of the Company.

Section 44. No bonds shall be authenticated and delivered under this Article IV, unless, as shown by a net earnings certi-

cate, (as defined in Section 12 hereof), the net earnings of the company for twelve consecutive calendar months within the fifteen calendar months immediately preceding any application for authentication and delivery of bonds shall have been in the aggregate at least equivalent to the sum of (a) twice the interest charge for a like period upon all underlying bonds outstanding (excluding underlying bonds held uncanceled in sinking funds against which bonds have been authenticated and delivered hereunder, and underlying bonds deposited and pledged with the Trustee hereunder), and on all outstanding bonds secured by mortgages constituting prior liens (excluding prior lien bonds deposited and pledged with the Trustee hereunder) and on all bonds of Series A outstanding and on all other outstanding bonds issued hereunder bearing interest at a rate of six per cent. per annum or less, plus (b) one and three-quarter times the interest charge for a like period on all bonds outstanding hereunder (other than Series A bonds) bearing interest at a rate in excess of six per cent. per annum (provided that, in the case of such last mentioned bonds, the amount required shall not be less than twelve per cent. of the principal amount of such bonds) and in all cases including as outstanding, bonds for the authentication and delivery of which application is then made.

Bonds Not Issuable During Periods of Default.

Section 45. No bonds shall be authenticated or delivered if the company is at the time, to the knowledge of the Trustee, in default under any of the provisions of this Indenture.

Requirements for Authentication.

Section 46. No application by the company to the Trustee for the authentication and delivery of bonds under this Article IV shall be granted by the Trustee, until the Trustee shall have received:

(1) A resolution, (as defined in Section 3 hereof), requesting the Trustee to authenticate and deliver bonds, specifying the principal amount of bonds called for, the series thereof and any other matters with respect thereto required or permitted by Section 13 of this Indenture and also specifying the officer or officers of the company to whom, or upon whose written order, such bonds shall be delivered.

(2) An engineer's certificate (as defined in Section 3 hereof) describing the permanent additions made the basis of the application in reasonable detail, stating that they are permanent additions, as defined in Section 6 hereof, and that they do not consist in whole or in part of properties which under the provisions of Section 38 hereof are not permitted to be made the basis of the authentication and delivery of bonds or withdrawal of cash; and stating separately the actual cost and (except as to permanent additions of the character described in sub-division (3) of this Section) the then fair value of such permanent additions; further specifying such of them as are respectively gas properties as defined in Section 7 hereof, disconnected properties as defined in Section 9 hereof, and short term franchise properties as defined in Section 11 hereof, and the nature, extent and amount of any prior liens (as defined in Section 5 hereof) existing upon any of the permanent additions, and stating what part, if any, of such permanent additions consist of a system, plant, or power house acquired or constructed as a whole, or represent property which has been used or operated by others than the company in the public utility business or has not been constructed by or for the company. If any such permanent additions have been used or operated by others than the company in the public utility business, the cash cost thereof may be deemed to include the cash cost of any rights and intangible property simultaneously acquired with the same for which no separate or distinct consideration shall have been paid or apportioned.

(3) In case any permanent additions are shown by the engineer's certificate provided for in sub-division (2) above to consist of a system, plant, or power house acquired or constructed as a whole, or property which has been used or operated by others than the company in the public utility business or which has not been constructed by or for the company, a further and independent engineer's certificate (as defined in Section 3 hereof) describing such property in reasonable detail, and stating the then fair value thereof, and further containing a brief statement of the considerations covering the signer's determination of the fair value thereof.

(4) A Net Earnings Certificate, as defined in Section 12 hereof, covering the net earnings of the company for a period of twelve

(12) consecutive calendar months within the fifteen (15) calendar months immediately preceding the application for authentication and delivery of bonds.

(5) An opinion of counsel, as defined in Section 3 hereof, specifying the instruments of conveyance, assignment and transfer necessary to vest in the Trustee, to hold as part of the mortgaged and pledged property hereunder, all the right, title and interest of the company (or, in the case of hydro-electric properties, of the owner thereof) in and to the permanent additions made the basis of the application, or stating that no such instruments are necessary for such purpose, and also stating the signer's opinion to the effect (a) that the company (or, in the case of hydro-electric properties, the owner thereof) has title to the permanent additions forming the basis of such application, subject to no lien, charge or incumbrance thereon or affecting the title thereto, prior to this Indenture, except taxes for the then current year, the underlying mortgages as defined in Section 4 hereof and prior liens as defined in Section 5 hereof; (b) that the company (or in the case of hydro-electric properties, the owner thereof) has corporate authority and all necessary permission from governmental authorities to own and operate the permanent additions in respect of which the application is made; (c) that the issue of the bonds, the authentication and delivery of which have been applied for, has been duly authorized by any and all governmental authorities, the consent of which is requisite to the legal issue of such bonds, or that no consent of any governmental authorities is requisite to the legal issue of such bonds; and (d) that the nature, extent and amount of prior liens, if any, mentioned in the accompanying engineer's certificate, are correctly stated. Unless such opinion shall show that no consent of any governmental authorities is requisite to the legal issue of the bonds, the authentication and delivery of which have been applied for, it shall specify any officially authenticated certificate or other document by which such consent is or may be evidenced.

(6) The instruments of conveyance, assignment and transfer, if any, and the officially authenticated certificates or other documents if any, specified in the opinion of counsel provided for in subdivision (5) above.

ARTICLE V.

Issuance of Bonds Upon Retirement of Bonds Previously Outstanding Hereunder.

Section 47. Whenever bonds authenticated and delivered hereunder are paid, retired, redeemed or cancelled (except through the use of cash withdrawn from the Trustee by the company under any provision of this Indenture, and except through the operation of the Renewal and Improvement Fund hereinafter provided for), the Trustee, upon the request of the company, shall authenticate and deliver additional bonds in principal amount—equivalent to the principal amount of the bonds so paid, retired, redeemed or cancelled but the provisions of Section 43 hereof shall be applicable to all bonds authenticated and delivered under this Article V.

ARTICLE VI.

Issuance of Bonds Upon Deposit of Cash With Trustee.**Requirements.**

Section 48. The Trustee shall from time to time upon the request of the company authenticate and deliver bonds upon deposit with the Trustee by the Company of cash equal to the amount of principal of the bonds so requested to be authenticated and delivered but only after the Trustee shall have received:

1. A resolution such as is described in subdivision (1) of Section 46 hereof.

2. A net earnings certificate from which it shall appear that the net earnings of the company for twelve (12) consecutive calendar months within the fifteen (15) calendar months immediately preceding any application for authentication and delivery of bonds under this section shall have been in the aggregate at least equivalent to the sum of (a) twice the interest charge for a like period upon all underlying bonds outstanding (excluding underlying bonds held uncanceled in sinking funds against which bonds have been authenticated and delivered hereunder, and underlying bonds deposited and pledged with the Trustee hereunder), and on all outstanding bonds secured by mortgages con-

stituting prior liens (excluding prior lien bonds deposited and pledged with the Trustee hereunder) and on all bonds of Series A outstanding and on all other outstanding bonds issued hereunder bearing interest at a rate of six per cent. per annum or less, plus (b) one and three-quarters times the interest charge for a like period on all bonds outstanding hereunder (other than Series A bonds) bearing interest at a rate in excess of six per cent. per annum (provided that, in the case of such last mentioned bonds, the amount required shall not be less than twelve per cent. of the principal amount of such bonds), and in all cases including as outstanding, bonds for the authentication and delivery of which application is then made.

3. An opinion of counsel to the effect that the issue of the bonds, the authentication and delivery of which have been applied for, has been duly authorized by any and all governmental authorities the consent of which is requisite to the legal issue of such bonds or that no consent of any governmental authorities is requisite to the legal issue of such bonds. Unless such opinion shall show that no consent of any governmental authorities is requisite to the legal issue of the bonds, the authentication and delivery of which have been applied for, it shall specify any officially authenticated certificates, or other documents, by which such consent is or may be evidenced.

4. The officially authenticated certificates or other documents, if any, specified in the opinion of counsel provided for in subdivision 3 above.

Withdrawal of Cash.

Section 49. All cash deposited with the Trustee under the provisions of the next preceding section hereof shall be held by the Trustee as a part of the mortgaged and pledged property, but whenever the company shall become entitled to the authentication and delivery of bonds under any of the provisions of this Indenture (other than those contained in the next preceding section) the Trustee shall pay over to the company or upon its order, evidenced by a resolution, in lieu of each bond to the delivery of which the company may then be so entitled, a sum in cash equal to the principal amount of one such bond; provided, however, that for the purpose of withdrawing cash, pursuant to the provisions of this section, it shall in no case be necessary for the company to deliver to the Trustee, the resolution and certificate

required by Sub-divisions (1) and (4) of Section 46 hereof, or such parts of the opinion described in Sub-division (5) or such of the certificates described in Sub-division (6) of said Section 46 as relate solely to the authorization of issuance of bonds by governmental authorities.

Placing Cash in Renewal and Improvement Fund.

Section 50. If, at any time, the company shall so direct, any sums deposited with the Trustee under the provisions of Section 48 hereof shall be withdrawn in the same manner and for the same purposes (except for repairs, maintenance, renewals and replacements) and subject to the same conditions, as moneys in the Renewal and Improvement Fund provided for in Article VIII hereof.

\$1,710,000 Cash Deposited For Permanent Additions.

Section 51. Concurrently with the authentication and delivery of bonds under the provisions of Section 31 of this Indenture the company shall deposit with the Trustee the sum of one million seven hundred and ten thousand dollars (\$1,710,000) in cash. Such cash shall be held and paid out by the Trustee against permanent additions as provided in Section 49 hereof, except that in lieu of each bond to the delivery of which the company may then be so entitled, the Trustee shall pay over a sum in cash equivalent to 85½% of the principal amount of such bond.

ARTICLE VII.

Particular Covenants of Company.

The company hereby covenants as follows:

Covenant of Possession, Right to Mortgage, Etc.

Section 52. That it is lawfully possessed of all the aforesaid mortgaged and pledged property; that it will maintain and preserve the lien of this Indenture so long as any of the bonds issued hereunder are outstanding; and that it has good right and lawful authority to mortgage and pledge the said mortgaged and pledged property, as provided in and by this Indenture.

Covenant to Pay Principal and Interest; Matured Coupons Not To Be Kept Alive.

Section 53. That it will duly and punctually pay the principal of and interest on all the bonds outstanding hereunder.

according to the terms thereof and that it will not directly or indirectly extend or assent to the extension of the time for the payment of any coupon or claim for interest upon any of the bonds and will not directly or indirectly be a party to or approve of any arrangement for any such extension by purchasing said coupons or claims or in any other manner. As the coupons annexed to said bonds are paid they shall be canceled.

Covenant to Maintain Office or Agency.

Section 54. That it will keep an office or agency in the City of _____, while any of the bonds issued hereunder are outstanding, where notices, presentations and demands to or upon the company in respect of said bonds or their coupons or this Indenture may be given or made, and for the payment of the principal thereof and interest thereon, and will keep at said office or agency in the City of _____, books for the registration and transfer of bonds issued hereunder, which books, at all reasonable times, shall be open for inspection by the Trustee. The company will from time to time give the Trustee written notice of the location of such office or agency, and in case the company shall fail to maintain such office or agency or to give the Trustee written notice of the location thereof, any such notice, presentation or demand in respect of said bonds or coupons or this Indenture may be given or made, unless other provision is expressly made herein, to or upon the Trustee at its office in the City of _____, and the company hereby authorizes such presentation and demand to be made to and such notice to be served on the Trustee in such event.

Covenant to Pay Taxes and Governmental Charges and Discharge Liens.

Section 55. That it will pay all taxes and assessments lawfully levied or assessed upon the mortgaged and pledged property, or upon any part thereof or upon any income therefrom, or upon the interest of the Trustee in the mortgaged and pledged property when the same shall become due, and will duly observe and conform to all valid requirements of any government authority relative to any of the mortgaged and pledged property, and all covenants, terms and conditions upon or under which any of the mortgaged and pledged property is held; that it will not suffer any lien to be hereafter created upon the mortgaged and pledged property, or any part thereof, or the income therefrom, prior to

the lien of these presents, except the liens of the mortgages securing the underlying bonds and prior liens as herein defined, and within three months after the accruing of any lawful claims or demands for labor, materials, supplies or other objects, which if unpaid might by law be given precedence over this indenture as a lien or charge upon the mortgaged and pledged property or the income thereof, it will pay or cause to be discharged or make adequate provision to satisfy or discharge the same; provided, however, that nothing in this section contained shall require the company to observe or conform to any requirement or governmental authority or to acquire or cause to be paid or discharged, or make provision for, any such lien or charge, so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings and provided that such security for the payment of such lien or charge shall be given as the Trustee may require; and that, save as aforesaid, it will not suffer any matter or thing whereby the lien hereof might or could be impaired.

Covenant to Keep Property Insured.

Section 56. That it will keep all the mortgaged property which is not fireproof and is of a character usually insured by companies similarly situated, insured against loss or damage by fire or other risk against which insurance is usually carried by companies operating like properties, to a reasonable amount, by reputable insurance companies, any loss to the extent of twenty-five thousand dollars (\$25,000.) or more to be made payable to the Trustee as its interest may appear, (except as to materials and supplies) or to the trustee under one of the mortgages securing any of the underlying bonds or one of the mortgages constituting prior liens if required by the terms thereof; and, if so requested in writing by the Trustee, will, subject to the requirements of any underlying mortgage or mortgage constituting a prior lien, cause policies for such insurance to be delivered to the Trustee. There shall be deposited with the Trustee at such times as the Trustee may demand, a detailed statement signed by the treasurer or an assistant treasurer of the company, of the insurance policies then outstanding and in force upon the aforesaid property, or any part thereof, including the names of the insurance companies which have

issued the policies, the amounts thereof and the property covered thereby.

Application of Proceeds of Insurance.

All moneys received by the Trustee as proceeds of any insurance against loss or damage shall, subject to the requirements of any mortgage securing any of the underlying bonds or constituting a prior lien, be paid to and held by the Trustee and, subject as aforesaid, shall be turned over by it to the company at any time within eighteen months thereafter either (1) to reimburse the company for an equal amount spent in rebuilding or renewal of the property destroyed or damaged, upon receipt by the Trustee of engineers' certificate, as defined in section 3 hereof, stating the amount so expended and the nature of such renewal or rebuilding; or (2) to reimburse the company for the acquisition or construction of permanent additions which otherwise could be made the basis of the authentication and delivery of bonds under the provisions of Article IV hereof, in the same manner and subject to the same restrictions and conditions as are required by section 70 of this Indenture with respect to moneys paid into the Renewal and Improvement Fund.

Any such money not so applied within eighteen months after its receipt by the Trustee, or in respect of which notice in writing of intention to apply the same to the work of rebuilding or renewal then in progress and uncompleted shall not have been given to the Trustee by the company within such eighteen months, or which the company shall at any time notify the Trustee is not to be so applied, may thereafter be withdrawn in the same manner and for the same purposes (except for repairs, maintenance, renewals and replacements), and subject to the same conditions, as moneys in the Renewal and Improvement Fund provided for in Article VIII hereof.

Covenant to Maintain Properties.

Section 57. That it will at all times maintain, preserve and keep the mortgaged property and every part thereof with the appurtenances and every part and parcel thereof, in thorough repair, working order and condition, and from time to time will make all needful and proper repairs and renewals, so that at all times the value of the security for the bonds issued hereunder and the efficiency of the plants and properties of the company

shall be fully preserved and maintained; that it will at all times maintain its corporate existence and right to carry on business, and duly procure all renewals and extensions thereof, and, subject to the provisions hereof, will diligently maintain, preserve and renew all the rights, powers, privileges, franchises and good will owned by it; and that it will not go into voluntary bankruptcy or insolvency, or apply for or consent to the appointment of a receiver of itself or of its property, or make any general assignment for the benefit of its creditors, or suffer any order for the appointment of a receiver of itself or of its property or adjudicating it to be bankrupt or insolvent to be made and remain unvacated for a period of sixty (60) days.

Power of Trustee.

Section 58. That if it shall fail to perform any of the covenants contained in Sections 55, 56 and 57, the Trustee may make advances to perform the same in its behalf, but shall be under no obligations so to do; and all sums so advanced shall be at once repayable by the company, and shall bear interest at six per centum (6%) per annum until paid, and shall be secured hereby, having the benefit of the lien hereby created in priority to the indebtedness evidenced by said bonds and coupons; but no such advance shall be deemed to relieve the company from any default hereunder.

Covenant to Record and File Mortgage and Preserve Lien.

Section 59. That it will cause this Indenture and all indentures and instruments supplemental hereto to be kept recorded and filed, in such manner and in such places as may be required by law in order fully to preserve and protect the security of the bondholders and all rights of the Trustee.

Covenant of Further Assurance.

Section 60. That it will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectually the purposes of this Indenture, and to make subject to the lien hereof any property hereafter acquired and intended to be covered hereby, and to transfer to any new Trustee or Trustees the estate, powers, instruments or funds held in trust hereunder.

Covenant to Keep Books of Record and Account.

Section 61. That proper books of record and account will be kept, in which full, true and correct entries will be made, of all dealings or transactions of, or in relation to, the plants, properties, business and affairs of the company, and that all books, documents and vouchers relating to the plants, properties, business and affairs of the company shall at all reasonable times be open to the inspection of such accountant or other agent, acceptable to the company, as the Trustee may from time to time designate, and that the company will bear all expenses of any such inspection.

Covenant to Pay Indebtedness Secured by Underlying Mortgages.

Section 62. That it will pay, as the same shall from time to time become due and payable, all indebtedness secured by the mortgages securing any of the underlying bonds and any mortgage, lien or incumbrance constituting a prior lien, including the principal and interest of any bonds or other indebtedness thereby secured, and will faithfully perform all the terms, covenants and conditions on its part to be performed in said mortgages, liens or incumbrances contained.

Covenant Not to Lease Property, Unless Lease Subordinated to This Indenture.

Section 63. That so long as any of the bonds issued hereunder shall be outstanding, it will not make any lease of any part of its property, unless such lease shall be specifically subordinated to the terms of this Indenture.

No Additional Bonds or Construction of Permanent Additions Subject to Prior Lien.

Section 64. That after the acquisition or construction of permanent additions subject to any prior lien, no additional bonds or other obligations shall be issued under the mortgage or other instrument constituting such prior lien, and no additional indebtedness secured by such prior lien shall be created; and that the company will forthwith deposit with the Trustee, to be held in pledge as additional security hereunder, any bonds or other obligations secured by prior liens which the company shall acquire. The provisions of Sections 34 and 35 hereof shall be applicable also to the cancellation and discharge of prior liens.

No Purchase Money Mortgage Obligations in Excess of \$1,000,000.

Section 65. That so long as any of the bonds issued hereunder shall be outstanding it will not become liable upon obligations secured by purchase money mortgages or other purchase money obligations exceeding one million dollars (\$1,000,000) in aggregate principal amount at any one time outstanding.

Payment to Trustee of Money on Account of Purchase of Equipment.

Section 66. That it will, on or before March 1 of each year, beginning with the year 1922, pay to the Trustee all sums received by it during the previous calendar year on account of the purchase price of the equipment described in the conditional sales agreement referred to in the granting clauses hereof, under which the company is conditional vendor and ----- Transit Company is conditional vendee. Such moneys may be withdrawn by the company in the same manner and for the same purposes (except for repairs, maintenance, renewals and replacements) and subject to the same conditions, as moneys in the Renewal and Improvement Fund provided for in Article VIII hereof.

Covenant Not to Issue Bonds Except in Accordance Herewith

Section 67. That it will not issue, or permit to be issued, any bonds hereunder in any manner other than in accordance with the provisions of this Indenture and the agreements in that behalf herein contained.

ARTICLE VIII.**Renewal and Improvement Fund.****Annual Statement.**

Section 68. The company covenants that on or before the first day of April in each year, beginning with the year 1922, it will deliver to the Trustee a written statement signed and verified by its President or a Vice President and by its Treasurer or an Assistant Treasurer, showing (a) a balance sheet as of the thirty-first day of December next preceding, (b) an earnings and income statement in reasonable detail for the year ending the thirty-first day of December next preceding, (c) the amounts actually expended during such year in maintaining, repairing, renewing and

replacing the property subject to the lien hereof (except such expenditures as shall have been the basis for a previous withdrawal of cash from the Renewal and Improvement Fund), set forth in reasonable detail, and (d) the aggregate principal amount of all bonds secured by this Indenture and the underlying mortgages and mortgages constituting prior liens outstanding at the close of the next preceding calendar year, separately stating the amount of each issue and in respect to each issue the amount of bonds which are not to be considered as outstanding by reason of the provisions of Section 69 hereof.

Payments to Trustee.

Section 69. The company covenants that it will, for the further security of said bonds, on April first in each year beginning with the year 1922, pay to the Trustee an amount of money equivalent to the amount by which five per cent (5%) of the aggregate principal amount of all bonds secured by this Indenture and the underlying mortgages and mortgages constituting prior liens outstanding at the close of the next preceding calendar year shall exceed the amount specified in subdivision (c) of the statement provided for in Section 68 hereof as having been actually expended during such preceding calendar year in maintaining, repairing, renewing and replacing the property subject to the lien hereof. For the purposes of this Section 69, the following classes of bonds shall not be considered outstanding viz.: (a) bonds issued under this Indenture for the redemption of which money shall be on deposit with the Trustee and held by it for such purpose as hereinafter in this Indenture provided; (b) underlying bonds for the redemption of which money shall have been deposited with the Trustee under the Indenture securing such bonds and held by it for such purpose; (c) underlying bonds held for the sinking fund under the mortgage securing such bonds against which bonds have been authenticated and delivered under the provisions of this Indenture; and (d) underlying bonds and bonds secured by mortgages constituting prior liens deposited and pledged with the Trustee hereunder. The amounts paid to the Trustee in accordance with the provisions of this section shall constitute a Renewal and Improvement Fund which shall be held by the Trustee as part of the mortgaged and pledged property until applied as hereinafter in this Article provided. If during any calendar year as shown by the verified statement referred to

in Section 68 hereof, there shall have been expended in repairs to and maintenance, renewals and replacements of the property subject to the lien of this Indenture, an amount in excess of five per centum (5%) of the aggregate principal amount of bonds outstanding at the end of such calendar year (as defined in this Section 69) the company shall be entitled, (a) to be reimbursed to the extent of such excess amount from moneys theretofore or thereafter deposited with the Trustee under the provisions of this Section 69, or (b) to be credited with the amount of such excess expenditure in computing any sums payable to the Trustee under this Section 69 on account of the two calendar years next succeeding.

Disposal of Money in Renewal and Improvement Fund.

Section 70. At the option of the company all moneys held in the Renewal and Improvement Fund shall be paid out by the Trustee from time to time to reimburse the company in full either (a) for sums expended in repairs to and maintenance, renewals and replacements of the property subject to the lien of this Indenture, which have not been made the basis for the withdrawal of cash under any provision of this Indenture or included in any computation provided for in Section 69 hereof, or (b) for expenditures incurred in acquiring or constructing permanent additions. Such moneys shall from time to time be paid out by the Trustee upon the written order of the company signed by its President or a Vice President, and in the case of maintenance, repairs, renewals and replacements, accompanied by a certificate signed by the President or Vice President of the company describing the same in reasonable detail, and the expenditures incurred therefor, and stating that no part of the same has previously been made the basis for the withdrawal of cash under any provision of this Indenture, or included in any computation provided for in Section 69 hereof, and in the case of permanent additions upon the filing with the Trustee by the company of such certificates, opinions, instruments and other papers with respect to such permanent additions as would be necessary under the provisions of Section 46 hereof to entitle the company to the authentication and delivery of bonds upon the basis of the acquisition or construction thereof, exclusive of the resolution and certificate required by subdivisions (1) and (4) of said Section 46 and of such parts of the opinion described in subdivision (5) and of such of the certi-

ificates described in subdivision (6) of said Section 46 as relate solely to the authorization of issuance of bonds by governmental authorities. In the case of the acquisition or construction of permanent additions subject to prior liens, the Trustee shall pay out cash under this section only for an amount equal to the amount by which the actual cash cost or fair value thereof (whichever is less) shall exceed the amount of all prior liens existing thereon (including in such cost the amount of such prior liens).

Right to Replace Cash Withdrawn From Renewal and Improvement Fund.

Section 71. In case at any time any money shall be paid out by the Trustee under the provisions of the next preceding section to reimburse the company for expenditures incurred in acquiring or constructing permanent additions, the company may at its option at any time or from time to time replace the same by depositing with the Trustee to the credit of the Renewal and Improvement Fund in addition to the moneys required to be deposited with the Trustee pursuant to the provisions of Section 69 a sum in cash equal to the moneys so paid out; and thereupon, at the option of the company, bonds may be authenticated and delivered by the Trustee upon the basis of the acquisition or construction of such permanent additions in accordance with any applicable provisions of this Indenture. The sum so replaced shall thereafter be available for all purposes for which it would have been available if it had not been withdrawn under the provisions of Section 70.

Application of Funds to Purchase of Bonds; Procedure.

Section 72. At any time the Trustee may, upon the request of the company, expressed by resolution (as defined in Section 3 hereof) apply all or any part of the Renewal and Improvement Fund held by it to the purchase of bonds then outstanding hereunder of such series as the company may designate at a price not exceeding the redemption price of such bonds as shall be by their terms redeemable before maturity and at not more than 105% of the principal of bonds not so redeemable. Before making any such purchase the Trustee shall, by notice published once in each of four successive calendar weeks in one daily newspaper of general circulation published in the City of _____, in one daily newspaper of general circulation published in the

City of -----, and in one daily newspaper of general circulation published in each other city in which any of the bonds then outstanding may be payable, advertise for written proposals to sell to it on or before a specified date bonds then outstanding hereunder; and the Trustee, to the extent, as nearly as is possible, of the funds then in its hands and requested by the company to be so applied, shall purchase the bonds so offered at the lowest price or prices asked therefor, and reasonable notice shall be given by the Trustee to the owner or owners of the bonds whose proposals may be accepted. The Trustee may also in its discretion and, upon request of the company so to do, shall invite offers of bonds for sale to the Renewal and Improvement Fund in any other usual manner. Should there be two or more proposals at the same price aggregating more than the amount which the Trustee has available for investment, after having accepted all proposals at the lowest price, such proposals shall be accepted pro rata; provided, however, that no proposal shall be accepted by the Trustee at a price exceeding the limit specified above and the accrued interest; and provided further, that the Trustee shall have the right to reject any or all proposals in whole or in part, if it can at the time of opening said proposals purchase the requisite amount of said bonds or any part thereof at a lower price than the lowest price offered by the said proposals. All offers by holders shall be made subject to acceptance of a portion thereof. If after the expiration of ten days from the date specified in said notice there shall remain in the Renewal and Improvement Fund any money in excess of \$25,000, and if the Trustee shall be at such time unable otherwise to purchase the requisite amount of bonds at a price not exceeding the redemption price of such bonds and the accrued interest thereon or at 105% of the principal thereof and accrued interest thereon in the cases of any bonds not redeemable before maturity, the Trustee shall draw by lot according to such method as it shall deem proper in its discretion a number of bonds redeemable before maturity, of such series as may be designated by the company which, at the redemption prices specified therein, together with the interest on such bonds to the next semi-annual interest date, shall be sufficient to exhaust, as nearly as is possible, such remaining moneys, and shall give notice of the numbers of the bonds so drawn for purchase by the Renewal and Improvement Fund upon the next semi-annual interest date, in the manner and as provided for the redemption of bonds in Article IX, and upon the date so stated the Trustee

shall purchase the bonds so drawn for the account of the Renewal and Improvement Fund. After that date no interest shall accrue or be payable upon any of the bonds so designated for purchase, the coupons for interest maturing subsequent to that date shall be void, such bonds and coupons shall cease to be entitled to the benefit of the lien of this Indenture and the company shall be under no further liability in respect thereof.

Application of Funds to Purchase or Redemption of Bonds.

Section 73. All funds amounting to twenty-five thousand dollars (\$25,000) or over remaining in the Renewal and Improvement Fund for a period of twenty-four months, which shall not have been made the subject of a proper request by the company for reimbursement, as herein provided, shall be applied by the Trustee to the purchase or redemption of bonds in the manner specified in the next preceding section.

Delivery of Bonds to Trustee Equivalent to Payment of Cash.

Section 74. The delivery by the company to the Trustee of bonds outstanding hereunder with their appurtenant unmaturing coupons shall be deemed equivalent under this Article VIII to payment of cash under Section 69 to the amount of the principal thereof and accrued interest.

Bonds to Be Canceled.

Section 75. All bonds outstanding hereunder purchased or otherwise acquired by, or delivered to, the Trustee for the Renewal and Improvement Fund shall forthwith be canceled, and Trustee shall note on its record the fact of such cancellation, and thereupon shall deliver the bonds so canceled to the company.

Disposal of Fund on Sale of Mortgaged Property.

Section 76. If the mortgaged property shall be sold, either under the power of sale herein provided, or under decree of court in a suit for the foreclosure of this Indenture, then the Renewal and Improvement Fund shall be added to and dealt with as if it were part of the proceeds of such sale.

ARTICLE IX.**Redemption of Bonds.****What Bonds Are Redeemable.**

Section 77. Such of the bonds issued hereunder as are, by their terms, redeemable before maturity may, at the option of the company, be redeemed at such times, in such amounts and at such prices as may be specified therein and in accordance with the provisions of the four next succeeding sections numbered from 78 to 81, both inclusive.

Redemption of Part of Any Series.

Section 78. In case of redemption of a part only of any series of said bonds, the particular bonds so to be redeemed shall be selected by the Trustee by lot, according to such method as it shall deem proper in its discretion. Notice of intention to redeem (including in case a part only of the bonds of any particular series are to be redeemed, the numbers of such bonds) shall be given, by or on behalf of the company, by publication at least once in each of five successive calendar weeks immediately preceding the date fixed for redemption (the first publication to be at least thirty days before the redemption date), in one newspaper of general circulation published in the City of----- and one in the City of----- A copy of such notice shall also be mailed by or on behalf of the company, not less than thirty (30) days before the redemption date, to the holders of any registered bonds which are to be redeemed, at their last addresses appearing upon the registry books.

Deposit to Be Made With the Trustee.

Section 79. In the event that the company shall give notice of its intention to redeem any of the bonds, the company shall, and it hereby covenants that it will before the redemption day specified in such notice, deposit with the Trustee a sum of money sufficient to redeem all of such bonds on such date. If the company shall fail so to deposit the money for the redemption of said bonds such failure shall constitute a default under this Indenture and the said bonds so called for redemption shall immediately become due and payable, and the holders of said bonds shall be entitled to receive and the company shall be obligated to pay the redemption price of said bonds, and thereupon and without the

lapse of any period of time all of the remedies provided for in Article XI hereof with respect to a default in the payment of principal shall be available to and enforceable by the Trustee.

Application of Deposit.

Section 80. All moneys deposited by the company with the Trustee under the provisions of this article for the redemption of said bonds shall be held for account of the holders thereof (in the event of the redemption of a part only of said bonds, for account of the holders of such bonds as shall be selected by lot), and shall be paid to them, respectively, upon presentation and surrender of said bonds; and after such redemption day if the moneys for the redemption of said bonds shall have been deposited as aforesaid such bonds shall cease to bear interest, and such bonds shall cease to be entitled to the lien of this Indenture, and the coupons for interest maturing subsequent to that day shall be void.

Redeemed Bonds to be Canceled.

Section 81. All bonds paid, retired or redeemed under any of the provisions of this Indenture shall forthwith be canceled, and the Trustee shall thereupon deliver the bonds, so canceled to the company.

ARTICLE X

Possession, Use and Release of Mortgaged Property.

Company's Occupation of Property.

Section 82. While not in default in the payment of principal or interest on any bond then outstanding hereunder or in respect of any of the covenants, agreements or conditions in this Indenture contained, the company shall be suffered and permitted to possess, use and enjoy the mortgaged and pledged property (except money and securities which are expressly required to be deposited with the Trustee), and to receive and use the rents, issues, income, product and profits thereof, with power, in the ordinary course of business, freely and without let or hindrance on the part of the Trustee or of the bondholders, to use and consume supplies, and, except as herein otherwise expressly provided to the contrary, to exercise any and all rights under choses in action and contracts.

Sales Without Release.

Section 83. While the company is not in default as aforesaid, it may at any time and from time to time, without any release or consent by the Trustee, or accountability thereto for any consideration received by the company:

(1) Sell or otherwise dispose of, free from the lien of this Indenture, (a) any machinery, equipment, tools or implements which may have become obsolete or unfit for use, upon replacing the same by or substituting for the same new machinery, equipment, tools or implements, of at least equal value to that of those disposed of; and (b) any materials or supplies:

(2) Cancel, make changes or alterations in or substitutions of any and all right of way grants, leases or contracts;

(3) Surrender or assent to the modification of any franchise or governmental consent under which it may be operating, provided that, in the event of any such surrender or modification, the company or, in the case of a hydro-electric property, the owner shall still have, under some other franchise or governmental consent, or under the modified franchise or governmental consent, or under a new franchise, license, governmental consent or permit, received in exchange for the surrendered franchise or governmental consent (subject to the lien of this Indenture and free from any liens prior thereto, except taxes for the current year, the liens of the mortgages securing the underlying bonds, and prior liens), authority, in the opinion of counsel, to conduct the same or an extended business in the same or an extended territory for the same or an extended or unlimited period of time.

Sales With Release.**Requirements.**

Section 84. While the company is not in default as aforesaid to the knowledge of the Trustee, it may sell, exchange or otherwise dispose of any other of the mortgaged and pledged property (except underlying bonds pledged with the Trustee), and the Trustee shall release the same from the lien hereof upon the application of the company and receipt by the Trustee of

(1) a resolution (as defined in Section 3 hereof) requesting such release;

(2) An engineer's certificate (as defined in Section 3 hereof) made and dated not more than sixty days prior to the date of the application for such release, stating in substance as follows:

(a) that such release is desirable in the conduct of the business of the company, and that the security hereby afforded will not be impaired by such release, and

(b) that the company, or in the case of a hydro-electric property, the owner, has sold or exchanged, or contracted to sell or exchange, the property so to be released, for a consideration representing, in the opinion of the signers, its full value to the company, or in the case of a hydro-electric property, the owner, which consideration may be (1) cash, or (2) partly cash and partly obligations secured by purchase money mortgage upon the property released, or (3) any other property of the character which could be made the basis for the authentication and delivery of bonds under Article IV of this Indenture; such consideration to be set out in reasonable detail in such certificate;

(3) any money or obligations stated in said certificate to be the consideration for any such property so to be released (unless the same shall have been paid or delivered to the trustee under a mortgage securing underlying bonds or under a mortgage constituting a prior lien, in accordance with the provisions thereof);

(4) an opinion of counsel to the effect that any obligations included in the consideration for such release are, in his or their opinion, valid obligations, and that any purchase money mortgage securing the same is sufficient to afford a lien upon the property to be released, and stating also, in case the Trustee is requested to release any franchise, that such release will not impair the right of the company to operate any of its remaining properties.

(5) In case the consideration for the property to be released consists of permanent additions, the Trustee shall also be furnished with such certificates, and opinions with respect thereto and such instruments and other papers as would be necessary to entitle the company under the provisions of Section 46 hereof to the authentication and delivery of bonds upon the basis of the acquisition or construction of such permanent additions, exclusive of the resolution and certificate required by subdivisions (1) and (4) of said Section 46, and of such parts of the opinion described in subdivision (5) and of the certificates mentioned in

subdivision (6) of said Section 46 as relate solely to the authorization of issuance of bonds by governmental authorities.

Application of Money and Obligations.

Section 85. Any money received in consideration of any such release by the Trustee may thereafter be withdrawn in the same manner and for the same purposes (except for repairs, maintenance, renewals and replacements) and subject to the same conditions, as moneys in the Renewal and Improvement Fund provided for in Article VIII hereof. Any such obligations so received by the Trustee shall be collected by it, interest as received thereon meanwhile to be paid over to the company, not being then in default hereunder to the knowledge of the Trustee.

New Property.

Any new property acquired by exchange or purchase to take the place of any property released under any provision of this Article X, shall forthwith and without further conveyance become subject to the lien of and be covered by this Indenture as a part of the mortgaged property; but the company shall convey the same, or cause the same to be conveyed, to the Trustee by appropriate instruments of conveyance upon the trusts and for the purposes of this Indenture.

Release of Property Taken by Eminent Domain.

Section 86. Should any of the mortgaged property be taken by exercise of the power of eminent domain or should any governmental body, at any time, exercise any right which it may have to purchase any part of the mortgaged property, the Trustee may release the property so taken or purchased, and shall be fully protected in doing so upon being furnished with an opinion of counsel (as defined in Section 3 hereof) to the effect that such property has been taken by exercise of the power of eminent domain, or purchased by a governmental body or agency in the exercise of a right which it had to purchase the same. The proceeds of all property so taken or purchased, and also any sums similarly paid for other property, the operation of which is dependent upon that of the plants or property taken as aforesaid, shall be paid over to the Trustee (unless the same shall have been paid or delivered to the trustee under a mortgage securing underlying bonds or under a mortgage constituting a prior lien, in accordance with the provisions thereof), and, (if paid over to the

Trustee hereunder), may thereafter be withdrawn in the same manner and for the same purposes (except for repairs, maintenance, renewals and replacements), and subject to the same conditions, as moneys in the Renewal and Improvement Fund provided for in Article VIII hereof.

When Property in Hands of Receiver.

Section 87. In case the property mortgaged shall be in possession of a receiver, lawfully appointed, the powers hereinbefore conferred upon the company with respect to the sale or other disposition of the mortgaged property may be exercised by such receiver; and if the Trustee shall be in possession of the mortgaged property under any provision of this Indenture, then such powers may be exercised by the Trustee in its discretion.

When Purchaser is Not Put on Inquiry.

Section 88. No purchaser in good faith of property purporting to have been released hereunder shall be bound to ascertain the authority of the Trustee to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of this authority; nor shall any purchaser or grantee of any property or rights permitted by Section 83 hereof to be sold, granted, exchanged or otherwise disposed of, be under obligation to ascertain or inquire into the authority of the company to make any such sale, grant, exchange or other disposition.

ARTICLE XI.

Remedies of Trustee and Bondholders Upon Default.

Principal May Be Declared Due.

Section 89. If any of the following defaults shall occur, viz.: (a) default shall be made in the payment of any interest upon any bond hereby secured or in any payment hereby required to be made for the Renewal and Improvement Fund, and any such default shall continue for ninety (90) days, or (b) if default shall be made in the payment of any interest or principal on any underlying bond or on any bond secured by a mortgage constituting a prior lien, or in any sinking fund payment required by the mortgage securing any such underlying or prior lien bond, and any such default shall continue for the period of grace, if any, specified in such mortgage, or (c) if default shall be made in the due

performance of any other covenant, agreement or condition herein or in any supplemental indenture contained, and any such default shall continue for ninety (90) days after notice to the company from the Trustee (which notice the Trustee shall be under a duty to give upon the written request of the holders of twenty-five per cent (25%) in principal amount of bonds then outstanding hereunder), or (d) an order shall have been made for the appointment of a receiver of the company or its property or adjudicating the company to be bankrupt or insolvent, and shall remain unvacated for sixty (60) days, or (e) in case the company shall institute proceedings for voluntary bankruptcy or insolvency or shall apply for or consent to the appointment of a receiver for itself or its property or shall make an assignment for the benefit of its creditors, then and in any such case the Trustee may, and upon request of the holders of twenty-five per centum (25%) in principal amount of the bonds then outstanding hereunder, shall, by notice in writing delivered to the company, declare the principal of all bonds hereby secured then outstanding and the interest accrued thereon immediately due and payable, and the said principal and interest shall thereupon become and be immediately due and payable; subject, however, to the right of the holders of a majority in principal amount of said bonds by written notice to the company and to the Trustee to annul such declaration and destroy its effect at any time before any sale hereunder, if before any such sale all agreements with respect to which default shall have been made shall be fully performed, and all arrears of interest upon all bonds outstanding hereunder and the reasonable expenses and charges of the Trustee, its agents and attorneys, and all other indebtedness secured hereby, except the principal of any bonds not then due by their terms, and interest accrued on such bonds since the last interest day, shall be paid, or the amount thereof shall be paid to the Trustee for the benefit of those entitled thereto.

Trustee May Take Possession and Operate.

Section 90. If any of the following defaults shall occur, viz.: (a) If default shall be made in the payment of any interest upon any bond hereby secured or in any payment hereby required to be made for the Renewal and Improvement Fund, and any such default shall continue for ninety (90) days, or (b) if default shall be made in the payment of the principal of any bond hereby secured when the same shall have become due and payable, whether at

maturity as therein expressed or by declaration or otherwise, or (c) if default shall be made in the payment of any interest or principal on any underlying bond or on any bond secured by a mortgage constituting a prior lien, or in any sinking fund payment required by the mortgage securing any such underlying or prior lien bond, and any such default shall continue for the period of grace, if any, specified in such mortgage, or (d) if default shall be made in the due performance of any other covenant, agreement or condition herein or in any supplemental indenture contained, and any such default shall continue for ninety (90) days after notice to the company from the Trustee (which notice the Trustee shall be under a duty to give upon the written request of the holders of twenty-five per cent (25%) in principal amount of bonds then outstanding hereunder), or (e) an order shall have been made for the appointment of a receiver of the company or its property or adjudicating the company to be bankrupt or insolvent, and shall remain unvacated for sixty (60) days, or (f) in case the company shall institute proceedings for voluntary bankruptcy or insolvency or shall apply for or consent to the appointment of a receiver for itself or its property or shall make an assignment for the benefit of its creditors, then and in any such case the company, upon demand of the Trustee, shall forthwith surrender to the Trustee the actual possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of, all the mortgaged property (with the books, papers and accounts of the company), and to hold, operate and manage the same, and from time to time to make all needful repairs, and such alterations, additions and improvements as to the Trustee shall seem wise; and to receive the rents, income, issues and profits thereof, and out of the same to pay all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Trustee, its agents and counsel, and any charges of the Trustee hereunder, and any taxes and assessments and other charges prior to the lien of this Indenture which the Trustee may deem it wise to pay, and all expenses of such repairs, alterations, additions and improvements, and to apply the remainder of the moneys so received by the Trustee, first to the payment of the installments of interest which are due and unpaid, in the order of their maturity, and accrued interest thereon at the same rate as is expressed in the bonds, and next (if the principal of none of said bonds is due) to the dis-

charge of any overdue payments to the Renewal and Improvement Fund; or if the principal of any of said bonds is due, to the payment of said principal and accrued interest thereon at the same rate as is expressed in the bonds pro rata without any preference or priority whatever. Whenever all that is due upon such bonds and instalments of interest, Renewal and Improvement Fund payments, and under any of the terms of this Indenture shall have been paid and all defaults made good the Trustee shall surrender possession to the company, its successors or assigns; the same right of entry, however, to exist upon any subsequent default.

Power of Sale in Trustee Without Judicial Proceedings.

Section 91. If any of the following defaults shall occur, viz.: (a) If default shall be made in the payment of any interest upon any bond hereby secured or in any payment hereby required to be made for the Renewal and Improvement Fund, and any such default shall continue for ninety (90) days, or (b) if default shall be made in the payment of the principal of any bond hereby secured when the same shall have become due and payable, whether at maturity as therein expressed or by declaration or otherwise, or (c) if default shall be made in the payment of any interest or principal on any underlying bond or on any bond secured by a mortgage constituting a prior lien, or in any sinking fund payment required by the mortgage securing any such underlying or prior lien bond, and any such default shall continue for the period of grace, if any, specified in such mortgage, or (d) if default shall be made in the due performance of another covenant, agreement or condition herein or in any supplemental indenture contained, and any such default shall continue for ninety (90) days after notice to the company from the Trustee (which notice the Trustee shall be under a duty to give upon the written request of the holders of twenty-five per cent (25%) in principal amount of bonds then outstanding hereunder), or (e) an order shall have been made for the appointment of a receiver of the company or its property or adjudicating the company to be bankrupt or insolvent, and shall remain unvacated for sixty (60) days, or (f) in case the company shall institute proceedings for voluntary bankruptcy or insolvency or shall apply for or consent to the appointment of a receiver for itself or its property or shall make an assignment for the benefit of its creditors, then and in any such case it shall be lawful for the Trustee, by such officer or

agent as it may appoint, with or without entry to sell all the mortgaged and pledged property as an entirety, or in such parcels as the holders of a majority of the bonds outstanding hereunder shall in writing request, or in the absence of such request, as the Trustee may determine, at public auction, at some convenient place in-----, or such other place as may be required by law, having first given notice of such sale by publication in at least one newspaper of general circulation, published in-----, at least once a week for four successive weeks next preceding such sale, and by like publication in at least one daily newspaper of general circulation published in the City of-----, and any other notice which may be required by law, and from time to time to adjourn such sale in its discretion by announcement at the time and place fixed for such sale without further notice, and upon such sale to make and deliver to the purchaser or purchasers a good and sufficient deed or deeds for the same, which sale shall be a perpetual bar, both at law and in equity, against the company, and all persons and corporations lawfully claiming or to claim by, through or under it.

Judicial Proceeding By Trustee.

Section 92. In case of the breach of any of the covenants or conditions of this Indenture, the Trustee shall have the right and power to take appropriate judicial proceedings for the enforcement of its rights and the rights of the bondholders hereunder. In case of a default hereunder, and its continuance for the period, if any, provided for in Section 90 hereof, the Trustee may either after entry, or without entry, proceed by suit or suits at law or in equity to enforce payment of the bonds then outstanding hereunder and to foreclose this mortgage and to sell the mortgaged and pledged property under the judgment or decree of a court of competent jurisdiction; and it shall be obligatory upon the Trustee to take action, either by such proceedings or by the exercise of its powers with respect to entry or sale, as it may determine, upon being requested so to do by the holders of twenty-five per centum (25%) in principal amount of the bonds then outstanding hereunder and upon being indemnified as hereinafter provided. No bondholder or bondholders shall be entitled to take any such proceedings except in case of refusal or neglect of the Trustee to act after such continued breach and such request and tender of indemnity as aforesaid.

Remedies Cumulative.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default, continuing as aforesaid, shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

Direction By Majority of Bondholders.

Section 93. Anything in this Indenture to the contrary notwithstanding, the holders of a majority in principal amount of the bonds then outstanding hereunder shall have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken for any sale of the mortgaged and pledged property, or for the foreclosure of this Indenture, or for the appointment of a receiver; provided that such direction shall not be otherwise than in accordance with the provisions of law or of this Indenture.

Appointment of Receiver.

Section 94. In case of a default hereunder and its continuance for the period, if any, provided for in Section 90 hereof, and upon the filing of a bill in equity, or other commencement of judicial proceedings to enforce the rights of the Trustee and of the bondholders under this Indenture, the Trustee shall be entitled as a matter of right, to the appointment of a receiver or receivers of the mortgaged and pledged property, and of the income, rents, issues and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Bonds Due in Event of Sale.

Section 95. Upon any sale being made either under the power of sale hereby given or under judgment or decree in any judicial proceedings for the foreclosure or otherwise for the enforcement

of this Indenture, the principal of all bonds then outstanding hereunder, if not previously due, shall at once become and be immediately due and payable.

Purchase By Bondholders Or Trustee.

Receipt of Trustee Or Officer a Discharge of Purchaser.

Section 96. Upon any sale made either under the power of sale hereby given or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Indenture, any bondholder or bondholders or the Trustee, may bid for and purchase the mortgaged and pledged property and upon compliance with the terms of sale may hold, retain and possess and dispose of such property in their or its own absolute right without further accountability, and any purchaser at any such sale may, in paying purchase money, turn in any of the bonds and coupons outstanding hereunder in lieu of cash to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon, subject, however, to the provisions in respect to extended, pledged and transferred coupons contained in Section 98 hereof. Said bonds and coupons, in case the amounts so payable thereon shall be less than the amount due thereon, shall be returned to the holders thereof after being properly stamped to show partial payment.

Section 97. Upon any sale made either under the power of sale hereby given or under judgment or decree in any judicial proceedings for the foreclosure or otherwise for the enforcement of this Indenture, the receipt of the Trustee or of the officer making such sale shall be a sufficient discharge to the purchaser or purchasers at any sale for his or their purchase money and such purchaser or purchasers, his or their assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Trustee or of such officer therefor, be obliged to see to the application of such purchase money, or be in anywise answerable for any loss, misapplication or non-application thereof.

Application of Proceeds of Sale.

Section 98. The proceeds of any sale made either under the power of sale hereby given, or under judgment or decree in any judicial proceedings for the foreclosure or otherwise for the enforcement of this Indenture, together with any other amounts of

cash which may then be held by the Trustee, as part of the mortgaged and pledged property, shall be applied as follows:

First—To the payment of all taxes, assessments or liens prior to the lien of this Indenture, except those subject to which such sale shall have been made, and of all the costs and expenses of such sale, including reasonable compensation to the Trustee, its agents and attorneys, and of all other sums payable to the Trustee hereunder by reason of any expenses or liabilities incurred or advances made in connection with the management or administration of the trusts hereby created;

Second—To the payment in full of the amounts then due and unpaid for principal and interest upon the bonds then outstanding hereunder; and in case such proceeds shall be insufficient to pay in full the amounts so due and unpaid, then to the payment thereof ratably, with interest on the overdue principal and instalments of interest at the rates expressed in the bonds, without preference or priority of principal over interest, or of interest over principal, or of any instalment of interest over any other instalment of interest. Provided, however, that if the time for the payment of any coupon or claim for interest upon any of the bonds secured hereby shall have been extended, whether or not by or with the consent of the company, or if any thereof at or after maturity shall have been transferred or pledged separate from the bond to which they relate, such coupons or claims for interest shall not be entitled in case of default hereunder to the benefit or security of this Indenture except subject to the prior payment in full of the principal of all bonds issued hereunder then outstanding and of all coupons and claims for interest on such bonds the payment of which has not been so extended, or not so transferred or pledged.

Third.—Any surplus thereof remaining to the company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Waiver of Extension Laws, etc.

Section 99. In the case of a default on its part, as aforesaid, neither the company nor any one claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the mortgaged

and pledged property may be situated, in order to prevent or hinder the enforcement or foreclosure of this Indenture, or the absolute sale of the mortgaged and pledged property hereby conveyed, or the final and absolute putting into possession thereof immediately after such sale, of the purchaser or purchasers thereat, but the company, for itself and all who may claim through or under it, hereby waives the benefit of all such laws. And the company, for itself and all who may claim through or under it, waives any and all right to have the estates comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may sell the mortgaged and pledged property as an entirety.

Judgment May Be Taken by Trustee.

Section 100. The company covenants that if default shall be made in the payment of any principal hereby secured when the same shall become payable, whether by the maturity of said bonds or by declaration as authorized by this Indenture, or in case of a sale as provided in Section 95 hereof, then upon demand of the Trustee, the company will pay to the Trustee, for the benefit of the holders of the bonds and coupons then outstanding hereunder the whole amount due and payable on all such bonds and coupons for principal and interest, with interest upon the overdue principal and instalments of interest at the same rate borne by the bonds which are overdue; and in case the company shall fail to pay the same forthwith upon such demand, the Trustee in its own name and as trustee of an express trust shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid.

Lien Not to be Impaired by Such Judgment.

The Trustee shall be entitled to sue and recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture upon the mortgaged and pledged property, and in case of a sale of any of the mortgaged and pledged property and of the application of the proceeds of sale to the payment of the debt hereby secured, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all the

bonds and coupons then outstanding hereunder, for the benefit of the holders thereof, and the Trustee shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee and no levy of any execution upon any such judgment upon any of the mortgaged and pledged property or upon any other property, shall in any manner or to any extent affect the lien of this Indenture upon the mortgaged and pledged property or any part thereof, or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders of the said bonds, but such lien, rights, powers and remedies of the Trustee and of the bondholders shall continue unimpaired as before.

Application of Moneys Realized Upon Judgment.

Any moneys thus collected or received by the Trustee under this Section 100, shall be applied by it first, to the payment of its expenses, disbursements and compensation and the expenses, disbursements and compensation of its agents and attorneys, and, second, toward payment of the amounts then due and unpaid upon such bonds and coupons in respect of which such moneys shall have been collected, ratably and without preference or priority of any kind, according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and upon stamping such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

Bondholders' Remedies Subject to Conditions.

Section 101. No holder of any bond or coupon shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless such holder shall have previously given to the Trustee written notice of such default and of the continuance thereof as hereinbefore provided nor unless also the holders of twenty-five per centum (25%) in principal amount of the bonds then outstanding hereunder shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore

granted or to institute such action, suit or proceeding in its own name; nor unless also they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of the bonds or coupons shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by his or their action or to enforce any rights hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of outstanding bonds and coupons.

Company May Waive Periods of Grace.

Section 102. The company may, if permitted by law, waive any period of grace provided for in this Article XI.

Property to be Restored to Company on Abandonment of Proceedings.

Section 103. In case the Trustee shall have proceeded to enforce any right under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the company and the Trustee shall be restored to their former positions and rights hereunder with respect to the mortgaged property, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE XII.

Evidence of Rights of Bondholders and Ownership of Bonds.

Instrument Executed by Bondholders.

Section 104. Any request, declaration or other instrument, which this Indenture may require or permit to be signed and executed by the bondholders, may be in any number of concurrent instruments of similar tenor, and shall be signed or exe-

cuted by such bondholders in person or by attorney appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such attorney, or of the holding by any person of the bonds or coupons appertaining thereto, shall be sufficient for any purpose of this Indenture if made in the following manner:

(a) The fact and date of the execution by any person of such request or other instrument or writing may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution;

(b) The amount of bonds transferable by delivery held by any person executing such request or other instrument as a bondholder, and the issue and serial numbers thereof, held by such person, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depository wherever situated, if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depository, the bonds described in such certificate. The Trustee may nevertheless in its discretion require further proof in cases where it deems further proof desirable. The ownership of registered bonds shall be proved by the registry books.

Any request, consent or vote of the owner of any bond shall bind all future owners of the same instrument in respect of anything done or suffered by the company or the Trustee in pursuance thereof.

Ownership of Unregistered Bonds and Coupons.

Section 105. The company and the Trustee may deem and treat the bearer of any coupon bond outstanding hereunder, which shall not at the time be registered in the name of the owner thereof as hereinbefore authorized, and the holder of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof or on account thereof and for all other purposes, and neither the company nor the Trustee shall be affected by any notice to the contrary.

Ownership of Registered Bonds.

The company and the Trustee may deem and treat the person in whose name any registered bond without coupons outstanding hereunder shall be registered upon the books of the company as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of or on account of the principal of and interest on such bond and for all other purposes, and they may deem and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof for the purpose of receiving payment of or on account of the principal thereof and for all other purposes, except to receive payment of interest represented by outstanding coupons; and all such payments so made to any such registered holder or upon his order, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid, and neither the company nor the Trustee shall be affected by any notice to the contrary.

ARTICLE XIII.**Immunity of Incorporators, Stockholders, Officers and Directors.**

Section 106. No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director past, present or future of the company, or of any successor corporation, either directly or through the company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this Indenture, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers, or directors of the company, or of any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this Indenture or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature, and any and all rights and claims against every such incorporator, stockholder, officer or director, whether arising at common law or in

equity, or created by statute or constitution, are expressly released and waived as a condition of, and as part of the consideration of, the execution of this Indenture and the issue of the bonds and interest obligations secured hereby.

ARTICLE XIV.

Effect of Merger, Consolidation, Etc.

Company May Consolidate, Etc.

Section 107. Nothing in this Indenture shall prevent any consolidation or merger of the company with or into any corporation having corporate authority to carry on any of the businesses mentioned in Section 6 of this Indenture, or any conveyance, transfer or lease, subject to this Indenture, of all the mortgaged property as an entirety to any corporation lawfully entitled to acquire or lease and operate the same; provided, however, and the company covenants and agrees, that such consolidation, merger, conveyance, transfer or lease shall be upon such terms as fully to preserve and in no respect to impair the lien, efficiency or security, of this Indenture, or any of the rights or powers of the Trustee or the bondholders hereunder; and provided, further, that any such lease shall be made expressly subject to immediate termination by the company or by the Trustee at any time during the continuance of a default hereunder, and also by the purchaser of the property so leased at any sale thereof hereunder, whether such sale be made under the power of sale hereby conferred or under judicial proceedings; and provided further, that, upon any such consolidation, merger, conveyance or transfer, or upon any such lease the term of which extends beyond the date of maturity of any of the bonds secured hereby, the due and punctual payment of the principal and interest of all said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this Indenture to be kept or performed by the company, shall be assumed by the corporation formed by such consolidation or into which such merger shall have been made, or acquiring all the mortgaged property as an entirety, as aforesaid, or by the lessee under any such lease the term of which extends beyond the date of maturity of any of the bonds secured hereby.

Rights of Successor Corporation.

Section 108. In case the company, pursuant to Section 107 hereof, shall be consolidated with or merged into any other cor-

poration, or shall convey or transfer, subject to the lien of this Indenture, all the mortgaged property, as an entirety, the successor corporation formed by such consolidation, or into which the company shall have been merged, or which shall have received a conveyance or transfer as aforesaid—upon executing and causing to be recorded an Indenture with the Trustee, satisfactory to the Trustee, whereby such successor corporation shall assume and agree to pay, duly and punctually, the principal and interest of the bonds issued hereunder in accordance with the provisions of said bonds and coupons and this Indenture, and shall agree to perform and fulfill all the covenants and conditions of this Indenture binding upon the company—shall succeed to and be substituted for the company, with the same effect as if it had been named herein as the mortgagor company, and such successor corporation thereupon may cause to be executed, issued and delivered, either in its own name or in the name of -----Power & Light Company, any or all of such bonds which shall not theretofore have been executed by the company and authenticated by the Trustee, and upon the order of such successor corporation in lieu of the company, and subject to all the terms, conditions and restrictions in this Indenture prescribed, concerning the authentication and delivery of bonds, the Trustee shall authenticate and deliver any of such bonds which shall have been previously signed and delivered by the officers of the company to the Trustee for authentication, and any of such bonds which such successor corporation shall thereafter, in accordance with the provisions of this Indenture, cause to be executed and delivered to the Trustee for such purpose. All the bonds so issued shall in all respects have the same legal right and security as the bonds theretofore issued in accordance with the terms of this Indenture as though all of said bonds had been authenticated and delivered at the date of the execution hereof. Provided, however, that as a condition precedent to the execution by such successor corporation and the authentication and delivery by the Trustee of any such additional bonds in respect of the construction or acquisition by the successor corporation of permanent additions, the indenture with the Trustee to be executed and caused to be recorded by the successor corporation as in this Section 108 provided, shall contain a conveyance or transfer and mortgage in terms sufficient to include such permanent additions; and provided further, that the lien created thereby shall have similar force, effect and standing as the lien of this In-

denture would have if the company should not be consolidated with or merged into such other corporation or should not convey or transfer, subject to this Indenture, all the mortgaged property as an entirety, as aforesaid, to such successor corporation, and should itself acquire or construct such permanent additions, and request the authentication and delivery of bonds under the provisions of this Indenture in respect thereto.

The Trustee may receive an opinion of counsel (as defined in Section 3 hereof) as conclusive evidence that any such Indenture complies with the foregoing conditions and provisions of this Section 108.

Extent of Lien In Case of Consolidation or Merger.

Section 109. In case the company, pursuant to Section 107 of this Indenture, shall be consolidated with or merged into any other corporation, or shall convey or transfer, subject to this Indenture, all the mortgaged and pledged property as an entirety as aforesaid, neither this Indenture nor the indenture with the Trustee to be executed and caused to be recorded by the successor corporation as in Section 108 hereof provided, shall become or be a lien upon any of the properties or franchises of the successor corporation except those acquired by it from the company, and except permanent additions appurtenant thereto, and the permanent additions to or about the plants or properties of the successor corporation, made and used by it as the basis for the issue of additional bonds under this Indenture as herein provided, and such franchises, repairs and additional property as may be acquired by the successor corporation in pursuance of the covenants herein contained to maintain, renew and preserve the franchises covered by this Indenture and to keep and maintain the mortgaged property in good repair, working order and condition, or in pursuance of some other covenant or agreement hereof to be kept or performed by the company.

Surrender of Power.

Section 110. At any time prior to the exercise of any power by this Article XIV reserved to the company or a purchasing or successor corporation, the company may surrender any such power by delivering to the Trustee an instrument in writing executed by its President or a Vice-President under its corporate

seal attested by its Secretary or an Assistant Secretary, accompanied by the affidavit of its Secretary or an Assistant Secretary that the execution of such instrument was duly authorized by the vote of two-thirds of its Board of Directors, and thereupon the power so surrendered shall cease.

ARTICLE XV.

Concerning the Trustee.

Acceptance of Trust.

Section 111. The Trustee accepts the trust hereby created but only upon the terms and conditions set forth in this Article XV.

Recitals Are by the Company.

Section 112. The recitals of fact herein and in said bonds contained shall be taken as the statements of the company and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the value of the mortgaged and pledged property or any part thereof, or as to the title of the company thereto, or as to the security afforded thereby and hereby, or as to the validity of this Indenture or of the bonds or coupons issued hereunder, and the Trustee shall incur no responsibility in respect of such matters.

Trustee Under No Duty In Respect to Certain Matters.

Section 113. The Trustee shall be under no duty to file or record or cause to be filed or recorded this Indenture as a mortgage, conveyance or transfer of real or personal property, or otherwise, or to re-file or re-record or renew the same, or to procure any further, other, or additional instruments of further assurance, or to do any other act which may be suitable to be done for the better maintenance or continuance of the lien or security hereof, or for giving notice of the existence of such lien, or for extending or supplementing the same or to see that any property intended now or hereafter to be conveyed in trust hereunder is subject to the lien hereof. The Trustee shall not be liable for failure of the company to insure or renew insurance or for responsibilities of insurers, or for the failure of the company to pay any tax or taxes in respect of the mortgaged and pledged property, or any part thereof, or otherwise, nor shall the Trustee be under any duty in respect to any tax which may be assessed

against it or the owners of the bonds outstanding hereunder in respect of the mortgaged and pledged property. The Trustee shall be under no responsibility or duty with respect to the disposition of the bonds authenticated and delivered hereunder or the application of the proceeds thereof or the application of any moneys paid to the company under any of the provisions hereof, and the provisions of this Indenture to the effect that bonds may be authenticated and delivered on account of the acquisition or construction of any plants, properties, permanent improvements, extensions or additions or any similar provisions shall not be construed as imposing any responsibility or duty upon the Trustee to see that such bonds or such proceeds are actually applied on account of such acquisition or construction. The Trustee may, but shall not be obliged to, authenticate and deliver bonds prior to the recordation or filing of this Indenture.

Trustee May Act Through Agents, etc. Liability.

Section 114. The Trustee may execute any of the trusts or powers hereof and perform any duty hereunder, either itself or by or through its attorneys, agents or employees, and it shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys, agents or employees, if reasonable care has been exercised in the appointment and retention thereof, nor shall the Trustee be otherwise answerable or accountable under any circumstances whatsoever, except for its own bad faith.

When Trustee Must Act.

Section 115. The Trustee shall be under no obligation or duty to perform any act hereunder or to institute or defend any suit in respect hereof, unless properly indemnified to its satisfaction. The Trustee shall not be required to ascertain or inquire as to the performance of any of the covenants or agreements herein contained on the part of the company. The Trustee shall not be required to take notice, or be deemed to have knowledge, of any default of the company hereunder and may conclusively assume that there has been no such default unless and until it shall have been specifically notified in writing of such default by the company or the holders of not less than ten per centum (10%) in principal amount of the bonds then outstanding hereunder. The Trustee shall not be under any obligation to take any action in

respect of any default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing so to do by the holders of twenty-five per centum (25%) in principal amount of the bonds then outstanding hereunder; but this provision shall not affect any discretionary power herein given to the Trustee.

Notice By Trustee to Company.

Section 116. Except as herein otherwise provided, any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee on the company shall be deemed to have been sufficiently given and served, for all purposes, by being deposited postage prepaid in a post-office letter box in the City of-----, addressed (until another address is filed by the company with the Trustee) as follows:----- Power & Light Company, -----, -----.

The Trustee shall not be bound to recognize any person as the holder of a bond outstanding hereunder unless and until his bond is submitted to the Trustee for inspection, if required, and his title thereto satisfactorily established if disputed.

Trustee Protected.

Section 117. The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. The Trustee shall not be under any responsibility for the selection, appointment or approval of any engineer or counsel for any of the purposes expressed in this Indenture.

Sufficiency of Evidence For Authentication and Delivery of Bonds.

Section 118. Upon any application for the authentication and delivery of bonds hereunder or for the payment of any moneys held by the Trustee under any provision of this Indenture, or for the execution of any release, or upon any other application to

the Trustee hereunder, the resolution, certificates, statements, opinions, reports and orders required by any of the provisions of this Indenture to be delivered to the Trustee as a condition of the granting of such application may be received by the Trustee as conclusive evidence of any fact or matter therein set forth and shall be full warrant, authority and protection to the Trustee acting on the faith thereof, not only in respect of the facts but also in respect of the opinions therein set forth; and before granting any such application the Trustee shall not be bound to make any further investigation into the matters stated in any such resolution, certificate, statement, opinion, report or order, but if requested in writing so to do by the holders of not less than twenty-five per centum (25%) in principal amount of the outstanding bonds and only if furnished with adequate security and indemnity against the costs and expenses of such examination, the Trustee shall make such further investigation as to it may seem proper; but it may in its discretion make any such independent inquiry or investigation as it may see fit. If the Trustee shall determine or shall be requested, as aforesaid, to make such further inquiry, it shall be entitled to examine the books, records and premises of the company, either itself or by agent or attorney; and unless satisfied, with or without such examination, of the truth and accuracy of the matters stated in such resolutions, certificate, statement, opinion, report or order, it shall be under no obligation to grant the application. If after such examination or other inquiry the Trustee shall determine to grant the application it shall not be liable for any action taken in good faith. The reasonable expense of every such examination shall be paid by the company, or if paid by the Trustee shall be repaid by the company, upon demand, with interest at the rate of six per centum (6%) per annum, and such repayment shall be secured by a lien on the mortgaged and pledged property and the proceeds thereof prior to the lien of the bonds and coupons issued hereunder.

Interest.

Section 119. Except as herein otherwise expressly provided the Trustee shall allow and credit to the company interest on any moneys received by it hereunder at such rate as it allows at the same time upon other deposits of similar character.

Compensation.

Section 120. The company shall pay to the Trustee from time to time a reasonable compensation for all services rendered hereunder, and also all its reasonable expenses, charges, counsel fees and other disbursements and those of its attorneys, agents, and employees, incurred in and about the administration and execution of the trusts hereby created, and the performance of its powers and duties hereunder, and agrees to indemnify and save the Trustee harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder. In default of such payments by the company, and as security for such indemnification, the Trustee shall have a lien therefor on the mortgaged and pledged property and the proceeds thereof prior to the lien of the bonds and coupons issued hereunder.

Proof by Certificate.

Section 121. Whenever in the administration of the trusts of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the President or a Vice-President and the Treasurer or Assistant Treasurer of the company and delivered to the Trustee, and such certificate shall be full warrant to the Trustee for any action taken or suffered by it under the provisions of this Indenture for the faith thereof; but in its discretion the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Trustee May Own Bonds and Coupons.

Section 122. The Trustee may become the owner of bonds and coupons secured hereby, with the same rights it would have if it were not Trustee.

Resignation of Trustee.

Section 123. Any Trustee, or any successor or successors hereafter appointed, or any of them, may at any time resign and be discharged of the trusts hereby created by giving written

notice to the company and thereafter publishing notice thereof, specifying a date when such resignation shall take effect, once a week for three (3) successive weeks in a daily newspaper of general circulation published in the -----, City of-----, and such resignation shall take effect upon the day specified in such notice unless previously a successor trustee shall have been appointed by the bondholders or the company as hereinafter provided, in which event such resignation shall take effect immediately on the appointment of such successor trustee.

Removal of Trustee.

Section 124. Any Trustee, or any successor or successors hereafter appointed, may be removed at any time by an instrument or concurrent instruments in writing filed with the Trustee, or a successor Trustee, and signed by the holders of a majority in principal amount of the bonds then outstanding hereunder.

New Trustee.

Section 125. In case at any time any Trustee, or any successor or successors hereafter appointed, shall resign, or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver of any Trustee or of any such successor or of its property shall be appointed, or if the Superintendent of Banks of the State of ----- or other public officer shall take charge or control of the Trustee or of any such successor or of its property or affairs, a successor or successors may be appointed by the holders of a majority in principal amount of the bonds then outstanding hereunder, by an instrument or concurrent instruments in writing signed and acknowledged by such bondholders or by their attorneys in fact duly authorized, and delivered to such new trustee, notification thereof being given to the company, and the predecessor trustee; provided, nevertheless, that until a new trustee shall be appointed by the bondholders as aforesaid, the company, by instrument executed by order of its Board of Directors and duly acknowledged by its proper officers, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. The company shall publish notice of any such appointment by it made once in each week for two (2) consecutive weeks, in a daily newspaper of general circulation published in -----, -----, and in a daily newspaper

of general circulation published in the -----, City of -----
Any new trustee appointed by the company shall, immediately and without further act, be superseded by a trustee appointed by the bondholders, as above provided.

If in a proper case no appointment of a successor trustee shall be made pursuant to the foregoing provisions of this Section 125 within six months after a vacancy shall have occurred in the office of trustee, the holder of any bond outstanding hereunder or any retiring trustee may apply to any court of competent jurisdiction to appoint a successor trustee. Said court may thereupon after such notice, if any, as such court may deem proper and prescribe, appoint a successor trustee.

Any Trustee appointed under the provisions of this Section 125 in succession to the Trustee shall be a trust company organized under the laws of the State of ----- and doing business in the -----, City of ----- (or a national banking association doing business in said borough), having a capital and surplus aggregating at least Five million dollars (\$5,000,000), if there be such a trust company or national banking association willing and able to accept the trust on reasonable and customary terms.

Acceptance by New Trustee.

Section 126. Any successor trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor trustee, and also to the company, an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein; but the trustee ceasing to act, shall nevertheless, on the written request of the company, or of the successor trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor trustee all the rights, title and interest of the trustee which he or it succeeds in and to the mortgaged and pledged property and such rights, powers, trusts, duties and obligations, and the trustee ceasing to act shall also, upon like request, pay over, assign and deliver to the successor trustee any money or other property subject to the

lien of this mortgage, including the pledged securities, which may then be in his or its possession. Should any deed, conveyance or instrument in writing from the company be required by the new trustee for more fully and certainly vesting in and confirming to such new trustee such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the company.

Merger or Consolidation of Trustee.

Section 127. Any company into which the Trustee may be merged or with which it may be consolidated or any company resulting from any merger or consolidation to which the Trustee shall be a party, provided such company shall be a corporation organized under the laws of the State of ----- and shall have an office for the transaction of its business in the City of -----, shall be the successor Trustee under this Indenture, without the execution or filing of any paper or the performance of any further act on the part of any other parties hereto, anything herein to the contrary notwithstanding. In case any of the bonds contemplated to be issued hereunder shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of the original Trustee or of any successor to it, as trustee hereunder, and deliver the said bonds so authenticated; and in case any of said bonds shall not have been authenticated, any successor to the Trustee may authenticate such bonds either in the name of any predecessor hereunder or in the name of the successor Trustee, and in all such cases such certificate shall have the full force which it is anywhere in said bonds or in this Indenture provided that the certificate of the Trustee shall have.

ARTICLE XVI.

Discharge of Mortgage.

Section 128. The Trustee may, and upon request of the company shall, cancel and discharge the lien of these presents, and execute and deliver to the company such deeds and instruments as shall be requisite to satisfy the lien hereof, and reconvey and transfer to the company the mortgaged and pledged property, whenever all indebtedness secured hereby shall have been paid.

including all proper charges of the Trustee hereunder. For this purpose bonds for the purchase of redemption of which money shall have been set apart by or paid to the Trustee under the provisions of Articles VIII and IX hereof and matured bonds for the payment of which money shall have been deposited with the Trustee shall be deemed to be paid.

ARTICLE XVII.

Miscellaneous.

Rights Confined to Parties and Bondholders.

Section 129. Nothing in this Indenture, expressed or implied, is intended or shall be construed to confer upon or to give to any person or corporation, other than the parties hereto and the holders of the bonds outstanding hereunder, any right, remedy, or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the company shall be for the sole and exclusive benefit of the parties hereto, and of the holders of the bonds and of the coupons outstanding hereunder.

Successors and Assigns.

Section 130. Whenever in this Indenture either of the parties hereto is named or referred to, this shall be deemed to include the successors or assigns of such party, and all the covenants and agreements in this Indenture contained by or on behalf of the company or by or on behalf of the Trustee shall bind and enure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

Execution in Counterparts.

Section 131. This Indenture shall be simultaneously executed in seventeen counterparts, and all said counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

Appointment of Attorneys to Acknowledge.

----- Power & Light Company, does hereby constitute and appoint ----- to be its attorney for it, and in its name and as and for its corporate act and deed to acknowledge this

Indenture before any person having authority by the laws of the
 ----- to take such acknowledgment, to the intent that
 the same may be duly recorded, and ----- Trust Company
 of ----- does hereby constitute and appoint -----
 to be its attorney for it, and in its name and as and for its cor-
 porate act and deed to acknowledge this Indenture before any
 person having authority by the laws of the Commonwealth of
 ----- to take such acknowledgment, to the intent that
 the same may be duly recorded.

Testimonium.

In witness whereof, -----Power & Light Company, party
 hereto of the first part, has caused its corporate name to be here-
 unto affixed, and this instrument to be signed and sealed by its
 President or a Vice-President, and its corporate seal to be attested
 by its Secretary or an Assistant Secretary for and in its behalf,
 and ----- Trust Company of New York, party hereto of
 the second part, in token of its acceptance of the trust hereby
 created, has caused its corporate name to be hereunto affixed, and
 this instrument to be signed and sealed by its President or a
 Vice-President and attested by its Secretary or an Assistant
 Secretary, all in the City of New York, as of the day and year
 first above written.

----- Power & Light Company,
 [Corporate Seal] -----
 Vice-President.

Attest:

 Assistant Secretary.

----- Trust Company of New York,
 [Corporate Seal] -----
 Vice-President.

Attest:

 Assistant Secretary.

(Here follow proper corporate acknowledgments.)

DEED OF EASEMENT AND RIGHT OF WAY.

NORTH CAROLINA,
----- COUNTY.

THIS INDENTURE, made this the ----- day of -----, 19---, by and between The -----, a corporation chartered by the General Assembly of North Carolina, with its principal office and place of business in the County of -----, State aforesaid, party of the first part, and ----- Company, a corporation of North Carolina, having its principal office and place of business in the City of -----, County of -----, State aforesaid, party of the second part:

WITNESSETH: That for and in consideration of the sum of ----- Dollars (\$-----), lawful money of the United States, in hand paid to the party of the first part by the party of the second part, the receipt of which is hereby acknowledged, the said The -----, party of the first part, hereby grants, bargains, sells and conveys unto the -----, party of the second part, its successors and assigns an easement and right of way which shall be located on a strip of land 20 feet in width on which to construct, erect and maintain another and secondary line or lines for the purpose of transmitting electric or other power, and a telegraph or telephone line or lines in, upon, along and over, through or across the same, which said strip of land shall be parallel to and located on the west side of the easement hereto on the following described lands situated in the County of -----and State of North Carolina, to-wit:

(Description.)

Said secondary line shall be constructed of poles.

The party of the first part reserves the right to use such right of way for agricultural purposes, and to cultivate said ground except as to the easement hereby granted.

The party of the second part agrees to pay any damages to crops that may be done during the construction and maintenance of said line.

Together with the right to the said party of the second part, its successors and assigns, to place, erect, relocate along the general directions of the said line, maintain and inspect and operate poles, crossarms and fixtures and to place and maintain such other appurtenances useful or necessary to operate said lines, and string wires and cables from time to time across, through or over

the above described premises; also the right and privilege to cut and remove from said property on the right of way any timber, trees or overhanging branches, or other obstructions, which do or may endanger the safety or interfere with the use of said poles or fixtures or wires thereto attached, and the right of ingress and egress, to and over the above mentioned premises for the purpose of repairing, renewing and inspecting said poles, fixtures, wires and appurtenances, and for doing anything necessary, useful or convenient for the enjoyment of the easement herein granted, also the privilege of removing at any time any or all of said improvements erected upon, over, under or on said land.

Together with the rights, easements, privileges and appurtenances which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever.

And the said party of the first part does, for itself, its successors and assigns, covenant to and with said party of the second part, its successors and assigns, that said party of the first part is lawfully seized in fee simple of said premises, and has a good right to sell and convey the rights herein granted, and the same is free from all mortgages, incumbrances or liens, and that said party of the first part will, for itself, its successors and assigns, warrant and defend the same to the said party of the second part, its successors and assigns forever against the lawful claims of all persons whomsoever.

IN TESTIMONY WHEREOF the said The -----, party of the first part, has this day caused its name to be signed hereto by the Chairman of its Board of Trustees and its corporate seal to be hereto affixed and attested by its Secretary, all of which was done under and by authority of a resolution of the Board of Trustees, on the day and year first above written.

THE -----

Attest:

By -----,
Chairman of Board of Trustees.

-----,
Secretary.

(Here should follow proper corporate acknowledgment).

REGULAR "CLOSED" DEED OF TRUST.

THIS INDENTURE, made and entered into as of the 1st day of _____, nineteen hundred and ____ by and between the _____ Power Corporation, a corporation organized and existing under and by virtue of the Laws of the State of North Carolina, and hereinafter called the "Corporation," party of the first part, and the _____ Guarantee & Trust Company, a corporation created and existing under the laws of the State of _____, hereinafter called the "Trustee," party of the second part;

Whereas, the Corporation has full power and authority to issue negotiable bonds and to secure the payment of such bonds and to mortgage all of its property, real and personal, wheresoever situated; and

Whereas, the Corporation desires now to make and to issue its First and Refunding Mortgage Thirty Year 6% Sinking Fund Gold Bonds of which the aggregate amount outstanding at any one time shall never exceed the principal sum of Three Hundred and Fifty Thousand (\$350,000.00) dollars, all of which bonds are to be issued under and in pursuance of, and are to be secured by this Indenture; and

Whereas, the said First and Refunding Mortgage Thirty Year 6% Sinking Fund Gold Bonds shall be coupon bonds, and shall be issued in denominations of One Hundred Dollars each, and Five Hundred Dollars each, as provided in said Indenture, numbers 1 to 2000, inclusive, being One Hundred Dollar bonds and numbers 2001 to 2300 being Five Hundred Dollar bonds; and

Whereas, all of the bonds are to bear interest at the rate of Six Per Cent (6%) per annum, payable annually on the first day of May in each year and shall be due and payable on the first day of May in the year nineteen hundred and _____; and

Whereas, each of said bonds shall be redeemable at any interest payment date before maturity by the Corporation, by payment of the principal and accrued interest thereon, and a premium of 10%, upon such conditions and in such manner as are designated in this Indenture, and all said bonds shall be entitled to the benefit of the sinking fund hereby created; and, except as to the numbers and denominations of the several bonds, each of said bonds and the coupons annexed thereto and the Trustee's certificate en-

dorsed thereon shall be substantially of the following tenor and form:

UNITED STATES OF AMERICA

State of North Carolina

POWER CORPORATION

First and Refunding Mortgage Thirty Year 6% Sinking Fund
Gold Bonds.

\$500.

No.-----

----- Power Corporation, a corporation created and existing under the laws of the State of North Carolina, hereinafter termed the "Corporation," for value received, hereby promises to pay on the 1st day of May, 19----, at the office of the----- Guarantee & Trust Company, in -----, to bearer, or if registered, to the registered holder of this bond, Five Hundred Dollars in gold coin of the United States of the present standard of weight and fineness, or the equivalent thereof, and to pay interest thereon from May 1st, 19--, until the payment or redemption of this bond at the rate of Six Per Cent (6%) per annum at such office in like gold coin or the equivalent thereof, annually on the first day of May, in each year, but only upon presentation and surrender of the respective coupons hereto attached as they severally mature. All payments upon this bond, both of principal and interest, shall be made without deduction for any tax or taxes which the Corporation, its successors or assigns, may be required to pay, deduct or retain therefrom under any present or future law of the United States, or of any state, county or municipality therein or of any foreign country, and the Corporation agrees to pay the normal United States Federal Income Tax not exceeding 2% in the aggregate, and also to reimburse the holders of this bond for any taxes (other than income, succession and inheritance taxes) assessed or imposed by either of the States of ----- or -----, or by any county or sub-division thereof, not in excess of four mills per annum for each dollar of the principal amount hereof, upon this bond or upon the holder hereof as a resident of one of said States by reason of the ownership thereof, provided such tax has been paid by such holder and written request for reimbursement is made in the manner specified in the Indenture hereinafter described.

This bond is one of a duly authorized issue of bonds of the Corporation, the aggregate amount whereof is limited to Three Hundred and Fifty Thousand Dollars (\$350,000.00), numbers 1

to 2000 being in denominations of One Hundred Dollars and numbers 2001-2300 being in denominations of Five Hundred Dollars each, and maturing on May 1st, 19____ all of which are issued and to be issued under and in pursuance of, and are secured and to be secured ratably by, and are subject to, an Indenture dated May 1st, 19__, duly executed by the Corporation to the----- Guarantee & Trust Company of-----, as Trustee, to which Indenture reference is hereby specifically made for a statement of the nature and extent of the security, the rights of the holders of the bonds under the same, and the terms and conditions upon which the bonds are issued and secured.

The Corporation covenants and agrees to pay to the Trustee annually on the 1st day of May in each and every year, beginning May 1st, 19__, until all the bonds outstanding shall be fully paid, the sum of \$6,000, as provided in said Indenture which shall constitute a sinking fund for the redemption or purchase of these bonds; all as provided in the said Indenture.

This bond is redeemable at the option of the Corporation on any interest date before maturity upon payment of the principal and interest then due and a premium of Ten Per Cent (10%) upon the principal, as provided by the terms of the Indenture.

No recourse shall be had for the payment of the principal or interest of this bond against any stockholder, officer or director of the Corporation, by virtue of any statute or by enforcement of any assessment or otherwise; any and all liability of stockholders, directors and officers of the Corporation being released by the acceptance of this bond.

This bond shall pass by delivery unless registered in the owner's name on the books of the Corporation at the office of the Trustee in said ----- City, such registry being noted on the bond, after which no transfer of the principal of this bond shall be valid unless made on said books in the manner prescribed in said Indenture and similarly noted on the bond; but this bond may be discharged from registry by being transferred in like manner to bearer, after which transferability by delivery shall be restored; but again, from time to time, it may be registered or transferred to bearer as before. Such registration, however, shall not affect the transferability of the coupons for the interest hereon, by delivery merely, and payment to the bearer thereof shall discharge the Corporation in respect of the interest therein mentioned whether or not the bond shall have been registered.

Neither this bond nor any coupon for interest thereon shall become or be valid until the bond shall have been authenticated by the certificate endorsed hereon duly signed by the Trustee under said Indenture.

In Witness Whereof, the ----- Power Corporation has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or by an Assistant Secretary, and coupons for such interest bearing the fac-simile signature of its Treasurer to be attached hereto, as of the first day of May, 19-----.

(Corporate
Seal)

----- POWER CORPORATION,

By -----
President.

Attest:

Secretary.

(Form of Interest Coupon.)

No.----- \$30.00

On the first day of May, 19---, the ----- Power Corporation will pay to bearer at the office of ----- Guarantee and Trust Company of -----, unless the bond to which this coupon is annexed shall have been previously redeemed, Thirty (\$30.00) Dollars in United States gold coin, without deduction for taxes specified in such bond, being the annual interest then due on its First and Refunding Mortgage Thirty Year 6% Sinking Fund Gold Bond No.-----.

Treasurer.

(Form of Trustee's Certificate.)

This is to certify that this bond is one of the bonds referred to in the within mentioned Indenture.

----- GUARANTEE AND TRUST COMPANY,

By -----

Assistant Secretary
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And Whereas, at a meeting of the stockholders of the Corporation duly called and held, the holders of all the outstanding stock of the Corporation by their vote, duly authorized the execution of this Indenture and the issue of the bonds hereby secured, as herein provided; and

Whereas, at a meeting of the Board of Directors of the Corporation, said Board of Directors duly approved the form of this Indenture and did resolve that in behalf of the Corporation, this Indenture be executed by its President or a Vice-President and that the corporate seal be affixed thereto and be attested by its Secretary or an Assistant Secretary and that this Indenture be acknowledged and delivered to the-----Guarantee & Trust Company of ----- as Trustee; that the bonds of the Corporation substantially of the tenor and effect set forth in this Indenture be executed from time to time in the name and behalf of the Corporation by the President or Vice-President, and that the corporate seal be thereto affixed and be attested by the Secretary or an Assistant Secretary of the Corporation; and that such bonds be issued, certified and delivered in the manner and upon the terms and conditions and for the purpose set forth in this Indenture; and

Whereas, all acts and things prescribed by law and by the by-laws of the Corporation as conditions precedent to the execution of this Indenture and the issue of the bonds hereby secured, have been duly performed, and the Corporation has executed this Indenture and has issued and delivered to the Trustee for certification the bonds hereby secured, in the exercise of each and every legal right and power in it vested;

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in order to secure the payment of the principal and the interest of all such First and Refunding Mortgage Thirty Year 6% Sinking Fund Gold Bonds of the Corporation at any time issued and outstanding under this Indenture, and in consideration of the premises and the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee, the receipt whereof is hereby acknowledged.

The Corporation, party of the first part hereto, has granted, bargained, aliened, conveyed, sold, assigned, transferred and set over, and does hereby grant, bargain, alien, convey, sell, assign

transfer and set over, unto the Trustee, party of the second part hereto, and its successor or successors in the trust hereby created, in fee simple, the following described properties, viz.:

All those parcels of land situate partly in-----
County and partly in-----County, State of
North Carolina, comprising what is known as-----,
adjoining the Town of-----, and described as follows,
that is to say:

(Here follows description.)

Saving and excepting, however, from the above described lands, certain portions heretofore conveyed away by the-----
Mills, Inc., as follows:

(Here follows description.)

Together with the buildings and improvements thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereunto belonging or in anywise appertaining; and other property contained in or used in connection with the mill, i.e., mill plant, including main mill building, consisting of four divisions, one a three-story brick building, one a three-story frame building; one a four-story brick building and the other, a one-story brick building; boiler house, a one-story brick building, repair building, a two-story brick building, four each one-story frame buildings, one, a one-story brick building and one a two-story brick building, dam, water plant and all the machinery and appliances situated in said mill building or on said mill premises or used in connection therewith and the equipment of said mill, dwellings, tenements, churches, halls, stables and other buildings.

To Have and to Hold all such properties to the Trustee, its successors and assigns forever;

But in Trust, Nevertheless, under and subject to the conditions and provisions herein set forth, and for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued under and secured by this Indenture, and for the enforcement of the payment of such bonds and interest obligations and of this Indenture, without preference, priority or distinction as to lien or otherwise of any one bond over any other bond, by reason of priority in the issue or negotiation thereof, or by reason of any other cause, until payment of the principal and interest of such bond and interest obligations

or other provisions for the satisfaction thereof, as hereinafter authorized.

And it is Hereby Covenanted and declared that all such First and Refunding Mortgage Thirty Year 6% Sinking Fund Gold Bonds with the coupons for interest thereon are to be issued, certified and delivered, and that the assignment and transfer of such properties to the Trustee under this Indenture are subject to the covenants, conditions, uses and trusts hereinafter set forth, namely:

ARTICLE I.

Section 1. The bonds authorized to be issued under and to be secured by this Indenture, to the aggregate principal sum of Three Hundred and Fifty Thousand (\$350,000.00) Dollars, as soon as may be, after this Indenture has been executed, delivered and recorded, shall be delivered to the Trustee for certification, and shall be certified by the Trustee and disposed of as follows:

Section 2. (a) Bonds of an aggregate sum of Fifty Thousand (\$50,000.00) Dollars shall be certified and delivered by the Trustee to the Corporation as soon as may be after this Indenture has been executed, delivered and recorded. No resolution of the Board of Directors of the corporation shall be required for the delivery of these bonds, and the Trustee shall be in no wise liable or responsible for the use of any such bonds or their proceeds after such certification and delivery to the corporation. The receipt of the corporation, signed by its president or treasurer, shall be conclusive evidence of proper delivery hereunder.

(b) Bonds of an additional aggregate amount of One Hundred Thousand (\$100,000.00) Dollars, shall be certified and delivered by the Trustee to the Corporation in multiples of Five Hundred (\$500.00) Dollars, from time to time upon the receipt by the Trustee from the corporation of Fifty-five (55%) Per Cent. of the face value of such bonds. The sums of money so received by the Trustee shall be applied by the Trustee to the payment and release or partial payment and release of a certain mortgage made by the corporation to the-----Mills, Inc., to secure the payment of Fifty-five Thousand (\$55,000.00) Dollars on or before-----, nineteen hundred and-----, which mortgage was executed as of the----- day of-----, nineteen hundred and-----.

and is intended to be properly recorded among the Land Records of-----County and-----County, North Carolina, and to be prior in lien to this indenture. The receipt of the Trustees of sums of money so paid to the-----Mills, Inc., shall be evidence of the performance by the Trustee of its full duties under this section, and the Trustee shall be under no obligation to secure any release or partial release of said mortgage, and/or record the same among the Land Records of-----County and-----County aforesaid.

(c) Bonds of aggregate face value of Two Hundred Thousand (\$200,000.00) Dollars, being the residue of the bonds secured hereby after the disposition of those bonds to be delivered under the terms of Sections (a) and (b) of this Article, shall not be certified and delivered by the Trustee until the receipt by the Trustee of a certificate authenticated under oath by the President or one of the Vice Presidents of the company, setting forth in detail that extensions, additions, enlargements and betterments to the properties hereunder mortgaged have been completed and fully paid for at an actual cost of at least the net amount for which the bonds so to be delivered have or can be sold by the corporation; such amount to be evidenced by a certificate authenticated in like manner.

Section 3. Only such of said bonds as shall bear thereon a certificate substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this Indenture or be entitled to any lien or benefit hereunder. No such bond nor any coupon thereunto attached shall be valid for any purpose until such certificate shall have been duly endorsed on such bond. Every such certificate of the Trustee upon any bond executed by the corporation shall be conclusive evidence that the bond so certified was duly issued, and that the same is entitled to the benefit of the trust hereby created.

Section 4. In case any bond issued hereunder with the coupons thereto appertaining shall become mutilated or shall be lost or destroyed, the corporation (upon receipt of evidence satisfactory to it and to the Trustee of the loss or destruction of such bond and its coupons, and upon receipt also of satisfactory indemnity), in its discretion, may execute, and thereupon the Trustee at the request of the corporation and upon satisfactory indem-

nity shall certify and deliver, a new bond of like tenor, number and date in exchange and substitution for the bond lost or destroyed, or if mutilated, upon cancellation of the mutilated bond and its coupons.

Section 5. Until the definitive bonds intended to be secured hereby can be engraved or lithographed and prepared, the corporation may execute and deliver to the Trustee, and the Trustee may thereupon certify subject to the terms hereof, one or more printed or typewritten negotiable temporary bonds, substantially of the tenor of the bond hereinbefore recited, but without coupons, in any denomination. All such temporary bonds shall be dated the-----day of-----, 19----, and shall be exchangeable for the like aggregate face amount of definitive bonds to be issued hereunder, when prepared, and, upon any such exchange, such temporary bond shall be forthwith cancelled by the Trustee and delivered to the corporation for destruction. Until so exchanged, the said temporary bond or bonds shall be entitled to the lien and security of these presents to the same extent as definitive bonds issued and certified hereunder would be, and interest when and as payable shall be paid upon presentation thereof to the Trustee out of the fund in its hand for that purpose, and notation of such payment made thereon. As long as any such temporary bonds are outstanding, an equal amount in face value of definitive bonds shall be withheld from certification by the Trustee. All such temporary bonds shall be transferable by delivery only, and shall not have the privilege of registration.

Section 6. The interest coupons attached to the bonds issued hereunder shall be authenticated by the engraved or lithographed fac-simile signature of the present treasurer or of any future treasurer of the corporation, and the corporation may adopt and use for that purpose the engraved or lithographed fac-simile signature of any person who shall have been such treasurer, notwithstanding the fact that he may have ceased to be such treasurer at the time when such bonds shall be actually authenticated and delivered. Before authenticating or delivering any bond, all coupons thereon when matured shall by the Trustee be cut off and cancelled, and, on its written demand, delivered to the corporation.

Section 7. The bonds issued hereunder may be registered as to principal only with the corporation, on books kept for the

purpose at the office of the Trustee in the City of-----, in the name of the owner and the fact of such registration shall be noted thereon, and thereafter no transfer of any such bonds so registered shall be valid unless made on such books by the registered owner or his duly authorized attorney and similarly noted on such bonds. Any bond registered as aforesaid may again be made payable to the bearer by like transfer and endorsement and thereafter shall pass by delivery until again registered. Nothing herein contained shall be construed to restrict the transfer or delivery of the coupons attached to such bonds; and notwithstanding the registration of the bonds as above provided the coupons shall be and remain negotiable by delivery and payable to bearer on presentation and surrender thereof. The corporation hereby constitutes and appoints the Trustee its agent for the transfer and registration of bonds issued or to be issued hereunder, and hereby agrees that the Trustee shall be reimbursed for its services as such agent in the same manner as herein provided in relation to this trust, unless otherwise agreed. Upon presentation for such purpose the Trustee will, under such reasonable regulations as it may prescribe, register as to principal only, any bonds issued under the provisions hereof.

Section 8. As to all bonds registered as to principal, the person in whose name the same shall be registered shall, for all the purposes of this Indenture, be deemed and regarded as the owner thereof, and thereafter payment of or on account of the principal of such bonds shall be made only to or upon the order of such registered holder thereof; but such registration may be changed as above provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such bonds to the extent of the sum or sums so paid. The corporation and the Trustee may deem and treat the bearer of any bond which shall not at the time be registered as to principal, and the bearer of any coupon for interest, whether such bond shall be registered or not, as the absolute owner of such bond or coupon for the purpose of receiving payment thereof and for all other purposes whatsoever, and the corporation and the Trustee shall not be affected by any notice to the contrary.

Section 9. Nothing in this Indenture, or in the bonds issued hereunder, expressed or implied, is intended, or shall be construed, to give to any person or corporation other than the parties hereto, and the holders of bonds, issued under and secured by this

Indenture, any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be, and being, for the sole and exclusive benefit of the parties hereto, and of the holders of the bonds hereby secured.

ARTICLE II.

Particular Covenants of the Corporation.

The corporation covenants as follows:

Section 1. Duly and punctually to pay the principal and interest of every bond issued hereunder in gold coin of the United States of the present standard of weight and fineness, or its equivalent, at the dates and the place and in the manner mentioned therein or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction for any tax or taxes which the corporation, its successors or assigns, may be required to pay, deduct or retain therefrom, under any present or future law of the United States, or of any state, county, or municipality therein, or of any foreign country. The corporation agrees to pay the normal United States Federal Income Tax not exceeding 2% in the aggregate. The interest on said bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and when paid such coupons shall forthwith be cancelled by the Trustee.

Section 2. The corporation particularly agrees and covenants that it will reimburse the holder of any bond issued hereunder for all taxes (other than income, succession and inheritance taxes) assessed or imposed by either of the States of----- or-----, or by any county or subdivision thereof not in excess of four (4) mills per annum for each dollar of the principal amount of such bond, upon such bond or upon such holder as a resident of one of said states by reason of the ownership thereof, provided such tax has been paid by such holder and written request for such reimbursement, stating the distinctive number of said bond, and setting forth the facts of ownership and residence when such tax was assessed and paid, and that such tax was assessed upon and paid by said holder as a resident

of one of said states by reason of the ownership of said bond and the amount of tax so paid. Such request must be made to the corporation in writing, signed by the holder of such bond at its office or agency in-----City within the period of sixty days from the date of any payment of such tax by said holder, and the corporation shall not be liable to reimburse said holder for any such tax or taxes, unless such request be made within said period; and it shall in no event be liable to reimburse said holder for any interest or penalty assessed or paid in addition to the amount of said tax as originally assessed.

Section 3. Exclusively for the benefit of the holders of bonds issued hereunder the corporation covenants that it will, from time to time, duly pay and discharge or cause to be paid and discharged all liens, taxes, assessments and governmental charges lawfully imposed by any present or future law of the United States of America or of any State, county, municipality or other taxing authority therein, upon the trust estate or any part thereof or upon the income or profits thereof, and also all such taxes, assessments and governmental charges lawfully imposed upon the lien or interest under this Indenture of the Trustee or of the holders of the bonds hereby secured in or upon the trust estate or any part thereof, and also all principal and interest and other proper charges or payments upon prior liens or mortgages or deeds of trust, at the times when the same shall become payable, the lien of which would be prior to the lien thereof, so that the lien and priority of this Indenture shall at all times be fully preserved at the cost of the corporation, without expense to the Trustee or to the bondholders; provided, however, that the corporation shall not be required to pay any such liens, taxes, assessments or governmental charges so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof.

Section 4. The corporation, its successors and assigns, from time to time, on written demand of the Trustee or its successors will make, do, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances as may be reasonably required for effectuating the intention of these presents, and for better assuring or confirming unto the trustee and its successors in the trust hereby created, upon the trusts and for the purpose therein expressed, all and singular the property hereby assigned and transferred to the Trustee or intended so to be.

Section 5. The corporation agrees and covenants that it will not directly or indirectly extend or assent to the extension of the time for payment of any coupon secured hereby; and that it will not directly or indirectly be a party to or approve any such arrangement by purchasing or funding such coupons, or in any other manner. In case the time for payment of any such coupon or claim for interest shall be so extended, whether or not such extension be by or with the consent of the corporation, such coupon shall not be entitled in case of default hereunder, to the benefit or security of this Indenture except subject to the prior payment in full of the principal of all bonds issued hereunder then outstanding and of all matured coupons the payment of which has not been so extended.

Section 6. The corporation covenants and agrees that in case for any reason it shall make default in the payment of any instalment of interest when and as the same shall be due and payable as herein provided, it will pay interest on the amount of each such instalment at the rate of six (6%) per centum per annum from the date when the same became so payable, until paid.

Section 7. At its own cost and expense the corporation will do or cause to be done all things necessary to procure, preserve and to keep in full force and effect all its rights, privileges and franchises, and especially all rights, privileges and duties under any contracts, licenses, leases or covenants by it made or assumed, and shall and will diligently preserve all rights and privileges to it granted and on it conferred by law or otherwise; and it shall not and will not knowingly do or suffer any matter or thing whatsoever whereby the indebtedness created under this Indenture or the security therefor might or could be lost or impaired; and particularly no mortgage, pledge or lien which would have prior or equal standing with the lien given by this Indenture for the security of the above described bonds shall be executed, authorized or permitted by the corporation except as herein otherwise provided. It will do or cause to be done at its own cost and expense all things necessary to procure, to preserve and to keep in full force and effect all the rights and privileges of----- Power Corporation, and to enable it lawfully to do business in any state in which property covered hereby may be situated, and will comply with the laws of the United States, and with the laws and ordinances of all states, municipalities and other gov-

ernmental bodies having jurisdiction in that behalf, in such manner and form as counsel learned in the law shall advise.

Section 8. The corporation covenants and agrees that the bonds secured hereby constitute direct, valid, legal and binding obligations of the corporation both as to principal and interest for the payment of which the corporation is liable.

Section 9. The corporation covenants and agrees that, as long as any bond is outstanding hereunder, it will maintain an office or agency at the office of the Trustee in _____ City, State of _____, for the payment of the principal and interest of the outstanding bonds as herein agreed, and that notices, presentations and demands to or upon the corporation in respect of said bonds, coupons or this Indenture may be given or made by delivery of the same to the Trustee at said office.

Section 10. The corporation covenants and agrees that it will keep all the property which is at any time covered by this Indenture, which is not fireproof and which is of a character usually insured by companies similarly situated, insured against loss or damage by fire, to a reasonable amount by reputable insurance companies—loss, if any, to be made payable to the Trustee as its interest may appear, and shall deposit with the Trustee the policies or a certificate representing the same. All moneys collected by the Trustee under such policies shall be applied by it in redemption of the bonds secured hereby as provided in Article IV of this Indenture, or at the option of the corporation shall be paid to it on a certificate of its President that said moneys shall be expended in replacing destroyed property.

ARTICLE III.

Sinking Fund Provisions.

Section 1. (a) For the creation of a Sinking Fund to aid in the payments of the principal of the bonds secured hereby, the corporation covenants to pay to the Trustee on the first day of May in each and every year, so long as any of the bonds issued hereunder shall remain outstanding and unpaid, beginning with the year 19____, the sum of Six Thousand (\$6,000.00) Dollars in cash.

(b) In lieu of the annual payment in cash of the sum of Six Thousand (\$6,000.00) Dollars into the Sinking Fund as provided

in Section 1 of this Article, the corporation may, at its option, make payment thereof in full, or in part, in bonds secured hereby at the face value thereof, and such payment in bonds shall constitute a full and complete compliance by the corporation of the terms of this Article to the extent of the payment so made, and any bonds so delivered in payment, as aforesaid, shall be received, held and cancelled by the Trustee as if purchased at the face value thereof by the Trustee in accordance with the provisions of Section 3 of this Article.

Section 2. All moneys received by the Trustee pursuant to Section 1 of this Article shall constitute the Sinking Fund and shall be applied by the Trustee to the purchase of the bonds secured hereby as follows: Annually on the-----day of-----in each year until all of the bonds secured hereby have been fully paid and satisfied, the corporation shall publish once a week for two successive weeks in a newspaper of general circulation in the City of-----, notice to the holders of bonds secured hereby, to submit to the Trustee at its office in the City of-----, offers to sell said bonds to said Sinking Fund, and requiring that such offers must be submitted in writing, not later than the-----day of-----next succeeding and shall state the name and address of the holder of said bonds and the identifying numbers thereof, and whether the bonds offered are registered as herein provided, and shall be accompanied by a deposit of said bonds so offered for sale to the Sinking Fund and all subsequently maturing coupons thereon. The Trustee will issue its receipt for all bonds so deposited. No offer shall be considered by the Trustee which shall exceed 110% of the principal amount of said bonds offered and accrued interest thereon. To the extent of the Sinking Fund in its hands available for such purchase, the Trustee shall accept such bonds so offered, giving preference to those offered at the lowest price, until the money in such Sinking Fund shall be exhausted. In the event of several offers being made at equal prices within said preference and conditions, the Trustee shall select for purchase said bonds by lot. Upon acceptance of said offer the Trustee shall so notify by letter or telegram at the address stated in the offer, the holders of the bonds so accepted for sale to the Sinking Fund of the fact of such acceptance, specifying the bond or bonds so accepted by identifying number and the date when same will be paid, and thereupon out of the Sinking Fund

moneys in the hands of said Trustee, on and after said following November 1st, pay to such holder the amount of the purchase price as stated in said offers of the bond or bonds so accepted with the coupons thereof maturing on said date on presentation thereof to the Trustee at its office in the City of----- if such bonds have not theretofore been deposited with it. After the date specified in such notice all interest on the bonds so accepted shall cease, anything herein or in said bonds contained to the contrary notwithstanding. All bonds so purchased for the Sinking Fund with the coupons thereto attached maturing thereafter shall be canceled by the Trustee, and delivered to the corporation and shall not be reissued. All bonds deposited with the Trustee not so accepted shall on demand and surrender of the Trustee's receipt therefor be returned to the holder depositing the same with the Trustee. In its discretion, the Trustee may accept in lieu of the deposit with such offers of said bonds, a certificate of any bank, trust company, or banker that the bond or bonds so offered for sale to the Sinking Fund is deposited with such bank, trust company or banker and will be held by it until after the 5th day of the following November and will be delivered to the Trustee if the offer therefor is accepted. If any bond or bonds so offered for sale to the Sinking Fund shall at the time of such offer be registered as herein provided, the registered holder making such offer in addition to the deposit of such bond, or certificate of a bank, trust company or banker as the case may be, shall deposit also such proper instruments of transfer as may be required by the Trustee.

Section 3. If no offer is received by the Trustee for sale of such bonds to the Sinking Fund or if all offers received are at a price greater than 110% of the principal amount thereof, or if the offers received do not comply with the terms of said notice or are irregular for any reason or are not accompanied by the deposit of such offered bonds or certificates in lieu thereof, or if the bonds so offered are registered and are not accompanied by proper instruments of transfer, the Trustee shall use the moneys in the Sinking Fund for the redemption of bonds secured hereby as provided in Article IV of this Indenture.

Section 4. It is expressly understood and agreed that if the corporation shall at any time neglect or fail to pay to the Trustee any of the sums required to be paid by it for the Sinking Fund when and as the same may be payable, then and in such case the

Trustee may, but shall not be bound to do so, except on the written request of the holders of a majority in amount of the bonds secured hereby then outstanding accompanied by indemnity satisfactory to the Trustee, compel payment of the same by such proceedings at law, in equity or otherwise, either on this Indenture or otherwise as it may be advised, and in the event of such proceedings the Trustee shall receive and be paid due compensation therefor and all costs, counsel fees and other charges and expenses in that behalf paid or incurred.

ARTICLE IV.

Redemption.

Section 1. The corporation may at any interest date before the maturity of the bonds, redeem and pay any or all of said bonds outstanding hereunder and secured hereby, at the face value thereof plus a premium of Ten (10%) per cent. of such face value. Such redemption shall be provided for and made by depositing with the Trustee, in gold coin of the United States of America, of or equal to the present standard of weight and fineness or its equivalent, such sum as may be sufficient with any other moneys then in the hands of the Trustee applicable thereto, to pay the principal together with the accrued interest and said premium of Ten (10%) per cent. upon the principal of the notes to be redeemed, provided that the corporation shall by publication in at least one newspaper of general circulation in-----City, once a week for three successive weeks, preceding such date have given notice of its intention so to pay and redeem the said bonds, specifying the date of such redemption, and, if less than all outstanding bonds are to be redeemed the identifying numbers of the bonds called for redemption. On the day specified in such notice the principal of all outstanding bonds hereunder, or so many of said bonds as shall have been thus specified for redemption, together with the said premium thereon and the accrued interest to such date of redemption, shall become and be due and payable at the Office of the Trustee, in-----City and all interest hereunder and lien and rights of said bonds under this Indenture as against the pledged properties, shall cease, if the deposit shall have been made as hereinbefore provided in that respect. In case less than all of said bonds are to be redeemed, the corporation shall notify the Trustee, not less

than thirty days before such interest date of the face amount of bonds it desires to redeem, and the Trustee shall, within three days thereafter, upon the request of the corporation, determine by drawing by lot the numbers of the bonds so to be redeemed. All bonds so to be redeemed shall be paid by the Trustee out of the moneys in its hands for that purpose on presentation and surrender of said bonds, and if registered upon delivery also to said Trustee of proper instruments of transfer. All bonds redeemed and paid as herein provided shall forthwith be cancelled by the Trustee, and the Trustee shall thereupon note upon the Indenture the fact of such cancellation, together with a memorandum of the numbers of the bonds so cancelled, and the Trustee shall thereupon deliver the bonds so cancelled to the corporation. If any holder of the bond or bonds so called for redemption does not present his or her bonds for payment upon the day named, and if registered shall not present also proper instruments of transfer, the Trustee shall retain the proportion of the money so deposited with it for that purpose represented by such bond or bonds as a special trust fund for the redemption of such bond or bonds and shall pay over the same to the lawful holder thereof upon due presentation as herein provided, at any time within six years thereafter, but interest on said bond or bonds so called for redemption, shall cease from and after the date fixed for such redemption, anything herein or in said bonds contained to the contrary notwithstanding.

Section 2. The corporation may, at any time prior to the maturity of said bonds, purchase or otherwise acquire any or all of said bonds outstanding, and the Trustee shall, upon delivery to it by the corporation of any bonds issued hereunder so purchased or acquired by it with all unmatured coupons thereunto appertaining, and if registered, upon delivery also of the requisite instruments of transfer, cancel said bonds and coupons, provided the same have not already been cancelled.

Section 3. Any bond or bonds cancelled under the terms of this Article IV shall not be reissued.

ARTICLE V.

Section 1. Until default as hereinafter defined shall be made by the corporation, its successors or assigns, in the payment of interest on any of the bonds which may have been issued and

outstanding and secured by this Indenture, or in the due and effectual observance and performance of any one or more of the covenants, agreements and conditions herein contained, on the part and behalf of the corporation, its successors and assigns, to be kept and performed, the corporation, its successors and assigns shall be suffered and permitted to have the actual possession of the said property, rights, franchises, estates, appurtenances and premises hereinbefore described and to manage, operate, use and enjoy all rights and franchises appertaining thereto, and to collect, receive and use the income, rents and profits thereof.

Section 2. All additions to said property hereinbefore described, and all interest therein and all lands for such additions, and all other real property acquired by said corporation for use or occupancy in carrying on its business or manufacturing, when and as the same may be hereafter acquired in any manner whatsoever, shall without any further conveyance or instrument, immediately upon such acquisition become and be made subject to the lien of this Indenture, as fully and completely as though the same were now owned by the corporation, and expressly and specifically conveyed by and embraced in, the granting clauses of this Indenture.

Section 3. If the corporation should deem it advantageous to sell, exchange, or otherwise dispose of any of its property covered hereby the corporation may procure a release of the same from the lien and operation of this Indenture, upon applying therefor at any time in writing to the Trustee, and paying the fair cash value of the property to be released or delivering to said Trustee in substitution therefor other property of like kind approved in writing by the corporation, which shall be at least equal to the value of the property to be released. The certificate of any officer of the corporation describing in detail such substituted property, may be accepted by the Trustee as sufficient evidence of the approval by the corporation of such substitution and of the value of any property sought to be released or of any property sought to be substituted therefor, but the Trustee on demand of a majority in value of the holders of the bonds outstanding shall require other and further proof of the value and other facts so certified. Any property of any kind, and any interest therein, whenever acquired by the corporation in renewal, replacement or substitution of property released from the lien of this Indenture, shall immediately upon such acquisition, without any further con-

veyance or assignment, become and be subject to the lien of this mortgage, as fully and completely as though now owned by the corporation and expressly and specifically conveyed by this mortgage; but the corporation shall, if and whenever at any time requested by the Trustee, execute an apt and proper instrument in writing to extend the lien of this mortgage specifically over the property or interest therein so hereafter acquired. Any money received by the Trustee, at any time as a consideration for any release shall be held by said Trustee subject to this mortgage and be kept invested for the benefit of the holders of the bonds and coupons secured hereby or may, at the request of the corporation, be applied to the redemption of outstanding bonds secured hereby, in accordance with the terms of Article IV of this instrument. Upon receiving such approved property or consideration for any release desired for the corporation with the other necessary documents pertaining thereto, said Trustee shall forthwith execute and deliver to the corporation a proper release such as desired. All expenses attendant upon such release, or any investigation conducted in connection therewith, shall be paid by the corporation.

ARTICLE VI.

Remedies of Trustee and Bondholders.

Section 1. No coupon belonging to any bonds secured hereby which in any way at or after maturity shall have been transferred or pledged, separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of or from this Indenture, except after the prior payment in full of the principal of the bonds issued hereunder and of all coupons not so transferred or pledged.

Section 2. In case default shall be made in the payment upon demand of any installment of interest on any bond or bonds hereby secured and then outstanding, and such default shall have continued for the period of two months, or in case default shall be made in the payment of any sums of money into the sinking fund as prescribed by Article III of this Indenture, and such default shall have continued for the period of two (2) months, then and in any such case, during the further continuance of such default, the Trustee, upon the written request of the holders of

a majority in amount of the bonds hereby secured and then outstanding, and upon deposit with it of the bonds of the requesting bondholders and if registered the necessary documents for transfer, and upon satisfactory indemnity, by notice in writing delivered to the corporation shall declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately; and upon any such declaration the same shall become and be due and payable immediately, anything in this Indenture or in said bonds to the contrary notwithstanding. This provision, however, is subject to the condition that, if, at any time after the principal of said bonds shall have been so declared due and payable, and before there shall have been any sale of the properties pledged hereunder, all sums payable under this Indenture (except the principal of any unmatured bonds hereby secured, then outstanding) shall have been duly paid and all defaults shall have been made good, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding by written notice to the corporation and to the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

Section 3. In case any of the following events shall happen, viz.:

- (a) Default in the payment of principal of any of the bonds issued hereunder whenever the same shall have become due and payable; or
- (b) Default in the payment of any installment of interest on any of the bonds issued hereunder when and as the same shall become payable, and such default shall have continued for a period of two (2) months; or
- (c) Default in the punctual payment of any sum of money into the sinking fund as prescribed in Article III of this Indenture, and such default shall have continued for a period of two (2) months; or
- (d) Default in the due observance or performance of any other agreement, covenant or condition in the bonds or herein required to be kept or performed by the Corporation, and such default shall have continued for two (2) months after written notice to the Corporation from the Trustee, which written notice shall however only be given to the Corporation by the Trustee at the written request of the holders

of ten (10%) per centum in amount of the bonds then outstanding and upon satisfactory indemnity; or

- (e) An order shall be made by a court of competent jurisdiction, or corporate action shall be taken by the Corporation, for winding up or liquidating the business of the Corporation; or
- (f) The Corporation shall make an assignment for the benefit of its creditors; or
- (g) A Distress or execution against the Corporation's property or any part thereof shall remain in force or unsatisfied or unsecured for a period of thirty (30) days; or
- (h) The Corporation shall suspend payments or shall cease to carry on its business or a substantial part thereof; or
- (i) The Corporation shall be adjudged bankrupt or insolvent;

Then, and in every such case the Trustee personally or by attorney, and in its discretion:

(1) May, and upon written request from the holders of a majority, in amount of the bonds then outstanding secured hereby, and a deposit with it of such bonds and if registered the necessary documents for transfer, and indemnity satisfactory to the Trustee, shall sell to the highest and best bidder all and singular, the real, personal and interest, claim and demand therein, and the right of redemption thereof, in one lot as an entirety or in separate lots as the Trustee shall deem best; which said sale or sales shall be made at public auction at such place in ----- City, or in the State of North Carolina, or at such other place and at such time and upon such terms as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided, or as may be required by law; or

(2) May, or under the conditions prescribed in (1) above shall proceed to protect and enforce its rights and the rights of the bondholders under this Indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce the rights aforesaid.

In case the Trustee shall have proceeded to enforce any rights under this Indenture, by sale, foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Corporation and the Trustee shall be restored to their former positions and rights hereunder in respect of the mortgaged premises, and the bonds and other property subject to or to be subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 4. Notice of any such sale pursuant to any provision of this Indenture shall state the time and place when and where the same is to be made, and shall contain brief general description of the property to be sold, and shall be published once in each week, for four successive weeks prior to such sale in two daily newspapers published in -----City, State of North Carolina.

Anything in this Indenture contained to the contrary notwithstanding, the holders of a majority in amount of the bonds hereby secured and then outstanding, deposited as aforesaid,—upon depositing with the Trustee indemnity satisfactory to it, from time to time shall have the right to direct and control the method and place of conducting any and all proceedings for any sale of the property subject to this Indenture or for the foreclosure of this Indenture or for the appointment of a receiver or any other proceeding hereunder.

The Trustee, from time to time, may adjourn any sale by it to be made under the provisions of this Indenture, by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned.

Section 5. Upon the completion of any sale or sales under this Indenture, the Trustee shall execute to the accepted purchaser or purchasers proper assignments and transfers of the property sold and shall deliver to the accepted purchaser or purchasers any of the property so sold that then shall be in the possession of the Trustee hereunder.

The Trustee and its successor hereby are appointed the true and lawful attorneys irrevocable of the Corporation, in its name

and stead to make all necessary transfers aforesaid, and for that purpose it and they may execute all necessary acts of assignment and transfer, the Corporation hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue hereof.

Any such sale or sales made under or by virtue of this Indenture, whether under the power of sale hereby granted and conferred or under and by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Corporation of, in and to the property so sold, and shall be a perpetual bar both at law and in equity against the Corporation, its successors and assigns, and against any and all persons claiming or to claim the property sold, or any part thereof, from, through or under the Corporation, its successors or assigns; and the receipt of the Trustee for the consideration money paid at any such sale shall be a sufficient discharge therefor to the purchaser, without any liability upon the part of the purchaser to see to the application of the purchase money, or to be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Section 6. In case of such sale under the foregoing provisions of this Article, whether under the power of sale herein granted or pursuant to judicial proceedings, the principal sums of all the bonds hereby secured, if not previously due, shall immediately thereupon become due and payable, anything in said bonds or in this Indenture contained to the contrary notwithstanding.

Section 7. The moneys, proceeds and avails of any such sale under the power of sale herein granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee under any of the provisions of this Indenture, as part of the trust estate or the proceeds thereof, shall be applied as follows:

(a) To the payment of the costs, and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee, and any charges, prior in lien to this Indenture, upon the property sold, except charges subject to which the property shall have been sold.

(b) To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of six per cent. (6%) per annum on principal

and overdue instalments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any instalment of interest over any other instalment of interest, ratably, to the aggregate of such principal and accrued and unpaid interest.

(c) To the payment of the surplus, if any, to the Corporation, its successors or assigns, or to whosoever may be lawfully entitled to receive the same.

Section 8. In the event of any sale hereunder, any purchaser for the purpose of making settlement or payment for the property purchased shall be entitled to use and apply any bonds, and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the owner of such bonds and coupons, as his ratable share of such net proceeds, after the deduction of costs, expenses, compensations, liabilities, advances and other charges; and thereupon such purchaser shall be credited, on account of such purchase price payable by him, with the portion of such net proceeds that shall be applicable to the payment of and that shall have been credited upon the notes and coupons so presented; and, at any such sale, any bondholder may bid for, and may purchase such property and may make payment therefor as aforesaid, and upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in their own absolute right, without further accountability.

Section 9. The Corporation covenants that (1) in case default shall be made in the payment of any instalment of interest on any bond or bonds at any time outstanding and secured by this Indenture, and the default in the payment of such instalments shall have continued for the period of two months, or (2) in case default shall be made in the punctual payment of any sum of money into the sinking fund as prescribed in Article III of this Indenture and such default shall have continued for a period of two months, or (3) in case default shall be made in the payment of the principal of any such bonds when the same shall become due and payable, whether upon maturity of said bonds or upon declaration as authorized by this Indenture, or upon a sale as

hereinbefore set forth, then upon demand of the Trustee, the Corporation will pay to the Trustee, for the benefit of the holders of the bonds and coupons hereby secured then outstanding, the whole amount that then shall have become due and payable on all such bonds and coupons then outstanding for interest or principal or both, as the case may be, with interest at the rate of six (6%) per cent. per annum upon the principal and overdue instalments of interest; and in case the Corporation shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as Trustee of an express trust, shall be entitled to recover judgment against the Corporation for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture, and the right of the Trustee to recover such judgment shall not be affected by any sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture or for the foreclosure of the lien thereof; and if, in case of a sale, the proceeds shall be insufficient for the payment of the debt hereby secured, the Trustee, in its own name and as Trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the bonds remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no levy of any execution upon property covered by this Indenture or upon any other property shall in any manner or to any extent affect the lien of the Trustee upon the property or any part of the property covered by this Indenture, or any rights, powers or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies shall continue unimpaired as before.

Any moneys thus collected by the Trustee under this Section (after deducting the proper charges and expenses of the Trustee) shall be applied by the Trustee toward payment of the amount then due and unpaid upon such bonds and coupons in respect of which such moneys shall have been collected, ratably, and without any preference or priority of any kind, except as provided in Section 1 of this Article, according to the amounts due and pay-

ble upon such bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons, and stamping thereon such payment if only partially paid, and upon surrender thereof if fully paid.

Section 10. The Corporation will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor will it claim, take or insist upon any benefit or advantage from any law now or hereafter in force providing for valuation or appraisalment of the property or any part of the property covered by this Indenture, prior to any sale thereof to be made pursuant to any provisions herein contained, or to the decree, judgment or order of any court of competent jurisdiction, nor after any such sale or sales will it claim or exercise any right under any statute enacted by any State, or otherwise, to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws; and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of any such power, as though no such law or laws had been made or enacted.

Section 11. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law, for the foreclosure of this Indenture, or for the execution of any trust hereunder, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of such default, and of the continuance thereof, as hereinbefore provided; nor unless, also the holders of a majority in amount of the bonds hereby secured, then outstanding, shall have made written request upon the Trustee and shall have offered to it a reasonable opportunity either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, nor unless, also, they shall have offered to the Trustee security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby satisfactory to the Trustee and have offered to deposit their bonds with the Trustee as aforesaid; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be

conditions precedent to the execution of the powers and trusts of this Indenture for the benefit of the bondholders, and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever, by his or their action, to affect, disturb, or prejudice the lien of this Indenture, or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

Section 12. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy or remedies; and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; but no action or proceeding shall be instituted or shall be maintained by any bondholder or by the Trustee upon any of the bonds or coupons hereby secured, or upon any of the covenants or agreements of this Indenture, or for the enforcement of the security of this Indenture, by reason of any default of the corporation in the payment of any instalment of interest on any such bonds, until after such default in the payment of such instalments shall have continued for the period of two months and no action or proceeding shall be instituted against the corporation by any bondholder to enforce the contractual liability of the corporation by reason of any of its covenants and promises contained in said bonds until the property covered by this Indenture shall have been exhausted by the pursuit of the remedies herein provided.

Section 13. No delay or omission of the Trustee, or of any holder of bonds, hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid, shall impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the bondholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the bondholders.

ARTICLE VII.**Individual Liability.**

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured shall be had against any incorporator, stockholder, officer or director of the corporation, or of any successor corporation, either directly or through the corporation, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this Indenture, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors of the corporation, or of any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this Indenture or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all rights, and claims against every such incorporator, stockholders, officers or directors, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived, as a condition of, and as part of the consideration for, the execution of this Indenture and the issue of the bonds and interest obligations secured hereby.

ARTICLE VIII.**Concerning the Trustee.**

The Trustee, the party hereto of the second part, for itself, and its successors, hereby accepts the trust in this Indenture declared and provided, and agrees to perform the same and assumes the duties hereby created and imposed upon it, but only upon the following promises and conditions, hereby stipulated and agreed by and between the parties hereto and by the present and future holders of bonds secured by this Indenture, supplementing the provisions of any law for the time being relating to trustees, to-wit:

Section 1. The Trustee shall not be responsible in any manner whatsoever for the recitals of facts herein contained and contained in the bonds or coupons hereby secured; but such recitals shall

be taken as statements made by the corporation alone, and no title or right to the beneficial interest in any bond shall be deemed to have been acquired from or through the Trustee.

Section 2. The Trustee shall not be responsible in any manner whatsoever for the validity or sufficiency of this Indenture, or for the amount or extent of the security afforded by the property hereby conveyed, or for the execution, filing or recording of this Indenture as a mortgage, or conveyance of real estate or as a chattel mortgage, or of any supplemental Indenture or instrument of further assurance given to it hereunder, or for refiling or renewing the same; or for seeing that any of the property intended to be conveyed in trust hereunder or by any supplemental indenture or instrument of further assurance is properly and legally subjected to the lien hereof or thereof; or for procuring any other additional instrument of further assurance; or for doing any other act which may be suitable and proper to be done for the protection or continuance of the lien of this Indenture; nor shall the Trustee be required to give notice of the existence of this or of any other or supplemental lien or to explain or supplement the lien sought to be created hereby.

Section 3. The Trustee shall be under no obligation to effect insurance against fire or any other loss, injury or damage to the mortgaged premises or to renew any policy of fire or other insurance; or to pay any tax, assessment or other charge that may be levied or imposed upon the mortgaged premises or upon the corporation or the Trustee or the bondholders in respect to their interest in the same; or to take any notice of such tax, assessment or other charge or to give any notice thereof to any person, or to keep itself informed or advised as to the payment of any insurance premiums, taxes, assessments or other charges that may be imposed upon the mortgaged premises affected by this or by any supplemental mortgage, real or personal, or to require the payment of any such insurance premiums, tax, assessment or charges; but the Trustee may in its sole discretion and at the expense of the corporation do any or all of the matters or things in this section set forth or require the same to be done. And for any expense or liability which the Trustee may pay or incur growing out of any such tax, assessment, premium, or other charge, the Trustee shall have a lien on the property covered hereby prior to the lien of the bonds secured hereby.

Section 4. The Trustee shall not incur any liability or responsibility whatever in consequence of permitting or suffering the corporation, its successors or assigns, to retain or be in possession of any part of the trust estate or mortgaged property and to use and enjoy the same, unless hereinbefore expressly otherwise provided; nor shall said Trustee, nor any future Trustee, be or become responsible or liable for any destruction, deterioration, loss, injury or damage which may be done or occur to the said mortgaged premises and property by the corporation, its agents or servants or by any third person, nor shall any Trustee be in any way responsible for the consequence of any breach on the part of the corporation of any of the covenants herein contained, or of any acts or omissions of the agents or servants of the corporation.

Section 5. The Trustee shall be under no duty or obligation to enter upon any leasehold premises mortgaged hereunder or to accept any mortgage, conveyance or other instrument, until indemnified to its full satisfaction for any rent payable or other charge created by operation of law or by the covenants, express or implied, of the lease thereof or of such mortgage, conveyance or other instrument.

Section 6. The Trustee shall not nor shall its agents, attorneys or servants be liable, by reason of any entry into possession of the mortgaged premises or of any part thereof, to account as mortgagee in possession or for anything except actual receipts; nor shall it be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be or be deemed to be liable. The trust estate, property and funds shall be primarily liable to third persons for all salaries, debts, contracts, and other obligations of the Trustee, and also for all damages or injuries to persons or property and for all other torts, arising out of or in any way connected with the Trustee entering upon or managing the trust estate or herein elsewhere provided for; and the Trustee shall not be personally liable in respect of any such matters.

Section 7. The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, which compensation as well as all its reasonable expenses necessarily incurred and actually disbursed hereunder, the corporation hereby agrees to pay, and the Trustee shall have lien on the mortgaged property for the payment of its compen-

sation and reasonable expenses incurred hereunder prior to the payment of any other sum secured hereby. The Trustee may select and employ in and about the execution of this trust, suitable attorneys, agents and servants, whose reasonable compensation and other expenditures shall be paid to the Trustee by the corporation, or in default of such payment shall be a charge upon the premises and property hereby mortgaged and the proceeds thereof paramount to said bonds and this Indenture; and the Trustee shall not be personally liable for any neglect, omission, misconduct or wrongdoing of such attorneys, agents and servants, reasonable care being exercised in their selection; nor shall the Trustee be otherwise liable or answerable for anything whatsoever in connection with this trust save for its own gross negligence or for its wilful default after personal notice and distinct specification in writing by some person interested in the trust.

Section 8. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created which in its opinion will be likely to involve it in expense or liability unless whenever and so often as required by the Trustee it shall be furnished with satisfactory security and indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder unless and until notified in writing of such default by the holders of a majority in amount of the bonds hereby secured and then outstanding, which notice shall distinctly specify the default, and in the absence of such notice, the Trustee may, for all the purposes of this Indenture, conclusively assume that no default has been made hereunder; nor shall it be required to take any action in respect of any such default involving any expense or liability unless requested in writing so to do by the holders of a majority in amount of the bonds issued under this mortgage or deed of trust and then outstanding, and indemnified to its complete satisfaction, anything herein contained to the contrary notwithstanding, but neither any such notice or request nor this provision therefor shall affect any discretion herein given to the Trustee to take action in respect of such default or to take action with or without any such request or indemnity.

Section 9. The Trustee may in its discretion advise, with legal counsel to be selected and employed by it at the expense of the corporation, and anything done or suffered in good faith by the

Trustee in accordance with the opinion of counsel shall be conclusive in favor of the Trustee upon the corporation, and upon all the holders of bonds and coupons secured hereby.

Section 10. The Trustee shall incur no liability to anybody in acting upon any notice, request, consent, certificate, note, bond, document or any paper believed by it to be genuine and to have been signed by the proper person. The Trustee shall be fully empowered to act, and shall be fully protected from all liability in acting upon any instrument or instruments purporting to be proper certificates or copies of resolutions or votes of the Board of Directors of the corporation and believed by the Trustee to be genuine. The regularity and validity of all acts and requests and directions of the Board of Directors and officers of the corporation shall be deemed, for the protection of the Trustee, to be conclusively proven by a certificate signed by any person being, or by the Trustee believed to be, the president, a vice president, the secretary or an assistant secretary or any other officer or servant of the corporation. Any written demand, request, notice, designation, direction or nomination to be made by the corporation under any of the provisions hereof shall, unless otherwise herein provided, be deemed sufficiently made and executed, if executed under the corporate seal of the corporation by the president or by a vice president of the corporation. The Trustee may receive a certificate signed by the secretary or an assistant secretary of the corporation as sufficient evidence of the adoption of any resolution of the Board of Directors of the corporation or of the shareholders thereof. In case at any time it shall be necessary and proper for the Trustee to make any investigation respecting any facts preparatory to taking or not taking any action or doing or not doing any act as such trustee, a certificate of the corporation, under its corporate seal attested by the signature of its president or treasurer, and the affidavit of one or more of its directors, shall be conclusive evidence of such facts and of the matters therein set forth for the protection of the Trustee in any action it may take or omit to take by reason of the supposed existence of such facts.

Section 11. The Trustee may act on the opinion or advice of or information obtained from any lawyer, surveyor, broker, banker, auctioneer or other expert, whether obtained by the Trustee or by the corporation or otherwise, and shall not be responsible for any loss occasioned by so acting. Any such advice

or opinion or information may be sent or obtained by letter, telegram or cablegram or otherwise, and the Trustee shall not be liable for acting on any advice, opinion or information purporting to be conveyed by any such letter, telegram or cablegram, although the same shall contain some error or shall not be authentic.

Section 12. The Trustee assumes no responsibility or liability whatsoever as to the genuineness, regularity, validity or ownership of any stock, bonds or other obligations to be received by it in accordance with the terms of this Indenture. The Trustee shall be at liberty to place all bonds, stock certificates, debentures or other securities or deeds or other documents of title to any of the mortgaged premises in any safe deposit vault named or other safe receptacle selected by the Trustee or with any banker or banking company of good repute in any part of the United States or if the Trustee thinks fit, with the manager or responsible officer of the corporation in the state where such mortgaged premises may from time to time be situate, and the Trustee shall not be responsible for any loss incurred in connection with any such deposit made by it with reasonable care, and the Trustee may pay out of the mortgaged premises all sums required to be paid on account of or in respect of any such deposit.

Section 13. The Trustee may from time to time and at any time waive on such terms and conditions as to it shall seem expedient, any breach by the corporation of any of the covenants and provisions herein contained without prejudice to the rights of the Trustee in respect of any subsequent breach thereof. No delay or omission of the Trustee or of any bondholder to exercise any right hereunder shall impair any such right or be a waiver of any default or an acquiescence therein.

Section 14. The Trustee shall have the exclusive right of action to take proceedings to enforce the provisions of this mortgage and no bondholder or bondholders shall take any proceedings until after he or they shall have requested the Trustee in writing to take such action and offered proper indemnity to said Trustee and said Trustee shall have unreasonably refused so to do.

Section 15. The Trustee shall be under no obligation to the ment of principal or interest of any of the bonds issued hereunder, except for their respective shares of such moneys to be beneficiaries of bonds in respect of moneys received by it in pay-

paid to them without interest on the surrender to the Trustee of their respective bonds and coupons.

Section 16. The Trustee shall not be concerned with or accountable for the use of any bonds or coupons hereunder delivered as herein provided or for the application of the proceeds of any such bonds or coupons.

Section 17. Any notice required hereunder to be given by the Trustee to the bondholders shall, unless herein otherwise provided, be given by publication once a week for two successive weeks in a daily newspaper published in -----City. Any notice to be given by the Trustee to the corporation may be given, at the Trustee's option, either by publication as aforesaid or by delivery of a true copy thereof at any time or place to any officer or person believed to be an officer, of the corporation or to any Receiver of the property of the corporation appointed by any court of competent jurisdiction, or by mailing it in a post-paid wrapper to the last address of the corporation appearing upon the records of the Trustee. Any notice to be given to the Trustee by any person shall be given in writing by serving a true copy thereof upon the Trustee at its office.

Section 18. No implied covenant shall be read into this instrument against the Trustee; but the duties, rights, powers and liabilities of the Trustee to the corporation and to all others shall be determined solely by the provisions of this instrument; and all questions or controversies as to the liability of the Trustee hereunder shall be decided and determined under the laws of North Carolina, and no action, suit or other legal proceedings against the Trustee shall be instituted or conducted in the courts of any other state unless with its voluntary written consent.

Section 19. The Trustee may, without being liable to account for any profit made thereby, buy, sell, lend upon and deal in the bonds secured hereby either with the corporation or otherwise and may generally contract and enter into financial transactions with the corporation or otherwise, whether in relation to the bonds secured hereby or the issue or subscription thereof or otherwise.

Section 20. Any request or other instrument required by this mortgage to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor and may be executed by such bondholders in person, or by an agent or

attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of any bond or bonds issued hereunder shall be sufficient for any purpose of this mortgage, and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument, if made in the following manner, viz.:

(a) The fact and date of the execution by any person of any such request or for any other instrument in writing may be proved by the certificate of any notary public or other officer authorized to take, either within or without the State of-----, acknowledgments of deeds to be recorded in said state, certifying that the person signing such request or other instrument acknowledged to him the execution thereof; or by the affidavit of a witness to such execution sworn to before a like officer.

(b) The amount of bonds held by any person signing any such request or other instrument as a bondholder, and the identifying numbers of the bonds held by such person and the date of his holding the same may be proved by a certificate executed by any trust company, bank or other depository (wheresoever situated), satisfactory to the Trustee, whose certificate shall be deemed satisfactory by the Trustee showing that at the date therein mentioned such person had on deposit with such depository or exhibited to it the bonds described in such certificate, or if the Trustee so elect, the Trustee shall not be bound to recognize any person as a bondholder unless and until his bonds are submitted to the said Trustee for inspection, if required, and his title thereto satisfactorily established; and if in either event the Trustee shall so require, any person or persons claiming to be the holder or holders of any of the bonds secured hereby and requesting any action on the part of the Trustee, shall as a condition precedent, deposit with the Trustee the bond or bonds in behalf of which such action is requested, taking from the Trustee its receipt therefor.

The Trustee may act upon any notice, request, waiver, requisition or resolution of the bondholders or any proportion of such bondholders, as provided in the various clauses of this Indenture, without regard to the right, title, interest or claim of any other person in or to the bonds hereby secured, or any part thereof,

or without regard to the existence of any equity or trust whether expressed, implied or constructive, to which such securities or any of them may at any time be subject.

(c) The Trustee may deem or treat the holder of any bond secured by this mortgage, which shall not at the time be registered as in this mortgage provided, and the holder of any coupon, as the absolute owner of such bond or coupon for the purpose of receiving payment thereof, and for all other purposes whatsoever, whether such bond or coupon be overdue or not, and the Trustee shall not be affected by any notice to the contrary.

Section 21. The Trustee may resign at any time on thirty days' notice in writing to the corporation, or may be removed at any time by an instrument or concurrent instruments in writing, executed by the holders of not less than a majority in amount of the then outstanding bonds issued hereunder. In case the Trustee shall resign or be removed, or otherwise become incapable of acting as Trustee hereunder, a successor trustee, qualified as hereinafter stated, may be appointed by an instrument, or concurrent instruments in writing executed by the holders of a majority in amount of the then outstanding bonds issued hereunder; provided, that in case the Trustee or any successor trustee shall not be in office as trustee hereunder, the corporation, its successors or assigns, may by an instrument authorized by its Board of Directors, appoint a trustee, qualified as hereinafter stated, to fill such vacancy until a trustee shall be appointed by the bondholders; but any trustee so appointed shall immediately and without further act be superseded by a trustee appointed by the holders of the bonds issued hereunder in the manner above provided. Every trustee appointed hereunder from time to time in place of the Trustee, party of the first part hereto, shall be a trust company in good standing doing business in the City of-----, if there be such a trust company willing and able to accept the trusts upon reasonable or customary terms.

Every trustee appointed hereunder from time to time in place of its predecessor trustee shall execute, acknowledge and deliver to the corporation an instrument accepting such appointment hereunder, and thereupon such new trustee, without any further act, transfer or assignment, shall become vested with all the rights, powers, duties and immunities then vested in its predecessor trustee, and every provision of this agreement applicable to the Trustee shall apply to such successor trustee, with like effect

as if originally named herein, in the stead and place of the party of the first part; but the Trustee, or any successor ceasing to act as trustee hereunder, nevertheless, upon the request of its successor trustee, shall make, execute and deliver any and all instruments of assignment or transfer of its rights and interest in, to and under this agreement, and shall duly transfer and deliver all moneys held by it in accordance with the terms hereof, if any, to such new trustee.

Section 22. Any money received by the Trustee under any provision of this Indenture may be treated by it until it is required to pay out the same conformably herewith, as a general deposit, without any liability for interest save such as, during that time, it allows on other deposits of similar character.

Section 23. If, under the terms of this Indenture, the bondholders are required or permitted to deposit with the Trustee or with any bank, trust company or banker or with any other depository, their respective bonds secured hereby, such deposit as to registered bonds shall not be considered as complete unless and until there shall also be deposited proper instruments of transfer as may be required by the Trustee, nor shall such deposit be considered complete as to any bonds registered or not unless the bondholders shall also deposit any necessary tax thereon or documentary stamps or other stamps for taxes or the value thereof in cash; if required by any present or future law of the United States or of any state as a prerequisite to transfer of title thereto.

Section 24. In executing this Indenture or acting thereunder, the Trustee makes no representation or covenant, express or implied, as to the title or interest of the corporation in and to the property described herein or which may hereafter pass under the lien of this Indenture, and it shall be no part of the duty of the Trustee to examine the title of or see that any of the said property is properly conveyed hereby or is properly or legally subjected to the lien thereof.

ARTICLE IX.

Termination of Trust.

Section 1. If, when the bonds hereby secured shall have become due and payable, the corporation shall well and truly pay, or cause to be paid, the whole amount of the principal and interest due upon all of the bonds and coupons hereby secured

then outstanding, or shall provide for the payment of such bonds and coupons by depositing with the Trustee hereunder the entire amount then due thereon for principal and interest, at that time, or shall have made the deposit required in this Indenture for the redemption of all of the said bonds at any time before such maturity, as provided by Article IV hereof, and also shall pay, or cause to be paid, all other sums payable hereunder by the corporation, and shall well and truly keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this Indenture, then and in that case the Trustee shall pay to the corporation all moneys remaining in its hands after providing for the payment of all outstanding bonds; and all property, rights and interest hereby conveyed or pledged shall revert to the corporation, and the estate, right, title and interest of the Trustee shall thereupon cease, determine and become void; and the Trustee in such case, on demand of the corporation, and at its cost and expense, shall execute proper instruments acknowledging satisfaction of this Indenture and reconveying to it the property pledged hereunder.

ARTICLE X.

Sundry Provisions.

Section 1. All the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the corporation, shall bind its successors and assigns, whether so expressed or not. For every purpose of this Indenture, including the execution, issue and use of the bonds hereby secured, the term "corporation" includes and means not only the party of the first part hereto, but also its successors and assigns.

Section 2. The word "Trustee" means the Trustee for the time being, whether original or successor; the words, Trustee, bond, bondholder, shall include the plural as well as the singular number, unless otherwise expressly indicated by the context. The word coupon refers to the interest coupons attached to the bonds secured hereby. The word person, used with reference to a bondholder, shall include associations or corporations owning any of said bonds. The word mortgage shall be taken to mean this Indenture unless otherwise expressly indicated by the context.

In Witness Whereof, the said parties have hereto caused their respective corporate seals, duly attested, to be affixed to an orig-

inal and duplicate hereof and their presents to be subscribed by their duly authorized officers as of the day and year first above written.

-----POWER CORPORATION,

By-----,

Attest:

President.

Secretary.

(Corporate Seal)

-----GUARANTEE & TRUST COMPANY,

By-----

Attest:

Vice-President.

Assistant Secretary.

(Corporate Seal)

STATE OF NORTH CAROLINA,
COUNTY OF-----

I-----a Notary Public in and for said state and county, do hereby certify:

That on this-----day of-----, 19____, personally came before me-----, Secretary of -----Power Corporation, who being by me duly sworn, says that he knows the common seal of said corporation, and is acquainted with-----, who is President of said corporation, and that he, the said-----, is Secretary of said-----Power Corporation, and saw the said-----, President as aforesaid, sign the foregoing deed of trust, and that he, the said-----, Secretary as aforesaid, affixed said seal to said Deed of Trust and became a subscribing witness to and attested the said Deed of Trust in the presence of said-----, President as aforesaid.

WITNESS my hand and notarial seal at office in said county, on the day and year first above written.

Notary Public in and for-----County, N. C.

(Notarial Seal)

My commission expires-----

(Similar acknowledgment should follow for Trustee Corporation)

(The following is a form of DEED OF TRUST, where one borrows money from the corporation, and another corporation, usually a local concern, endorses and guarantees the notes or obligations of the borrower.)

THIS INDENTURE, Made and entered into this the_____ day of_____, A.D. 19____, by and between _____and wife _____ of _____County, State of _____, parties of the first part; the _____Company, a Corporation organized under the laws of the State of North Carolina, with its principal office at_____, in said State, Trustee, party of the second part, and _____, a Corporation duly organized under the laws of the State of North Carolina, with its principal office at _____, N. C., and _____ a Corporation duly organized under the laws of North Carolina, with its principal office at_____, hereinafter designated as Guarantor, parties of the third part;

WITNESSETH, For That Whereas, the said parties of the first part are indebted to the said _____ for money borrowed in the sum of _____ for which the said _____ has executed and delivered to the said _____ h_____ bond _____ of even date with this Deed in Trust in said sum and due as follows: _____ with interest thereon from date until paid, at the rate of six per centum per annum, payable semi-annually, the payment of which said sum and interest has been guaranteed by the Guarantor hereunder; and it has been agreed between the parties that the payment of said bond shall be secured by the conveyance of the land hereinafter described, and that a certain policy or policies of insurance hereinafter designated shall be assigned as collateral security as hereinafter set out.

NOW THEREFORE, The said parties of the first part, in consideration of the premises and of the sum of One (\$1.00) Dollar to them paid by the parties of the second and third parts at the time of the execution and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, Trustee, and to its successor or successors forever, the following described tract of land, to-wit:

(Here follows description of land.)

Together with all and singular the appurtenances thereunto belonging and also all the estate, right, title, interest, dower, possession and claim whatsoever of the said parties of the first part in and to the same.

To have and to hold the above granted and described premises with the appurtenances, unto the said party of the second part, Trustee, its successors and assigns forever.

And the parties of the first part do covenant to and with the said party of the second part and the said parties of the third part, their successors and assigns, that-----
is the owner and seized of said premises in fee simple, and that the said parties of the first part have the right to convey the same in fee, that the same are free from encumbrances and that they will warrant and defend the title to the same from the lawful claims of all persons whomsoever.

But this deed is made upon the trusts and for the purposes following and none other, that is to say: if the said parties of the first part shall fail or neglect to pay said bond---- at maturity or shall fail or neglect to pay the interest on the same or any part of the debt or interest hereby secured, as it shall from time to time become due, then upon the happening of said events or either of them, all of said debt and interest shall at the option of the holder of any bond evidencing said debt or any part thereof, or at the option of the Guarantor, or either of them, immediately become due and payable and upon application of the parties mentioned immediately above or either of them, it shall be lawful for and the duty of the said party of the second part, Trustee, to sell and convey the above described premises or any part thereof, after

advertising the same as required by law, therein appointing a date and place of sale, to expose said lands at public auction to the highest bidder for cash, and upon such sale to convey title to the purchaser and, after first retaining five per cent. commission as compensation for making such sale and for all other services performed after default and also retaining all expenses incurred, out of the proceeds of such sale it shall apply so much of the residue as may be necessary to pay off and discharge the indebtedness hereinbefore set out and all interest then accrued and due thereon, and any sums due for taxes or insurance, or to remove prior incumbrances, and shall pay the balance, if any remain, to the said parties of the first part, their legal representatives or assigns.

And it is understood and agreed, That this deed is executed and accepted upon the following conditions:

That the said parties of the first part or one of them shall insure his life in some reputable insurance company doing business in the State of North Carolina, in a sum not less than \$-----, and shall keep the said policy of insurance in force during the period for which said bond or bonds or any of them shall run, which said policy of insurance shall be assigned to the Trustee hereunder as collateral security for the debt hereby secured, and in the event of the death of the said assured during the period for which said bond or bonds may run, it shall be the duty of the Trustee herein named at the request of the holder of said bond or bonds or any of them or of the Guarantor herein named, to declare all of said indebtedness due and payable immediately, to collect the amount due on the said policy of insurance and apply the proceeds to the payment of any of said indebtedness then remaining unpaid together with all interest and any sums paid by the holder or holders of the said bond or bonds or by the Guarantor for taxes, insurance, or to remove prior liens or incumbrances and to the discharge of the trust hereby created, including any expense incurred by the Trustee in discharging said trust, rendering the overplus, if any, to the legal representatives of the parties of the first part or to the beneficiary under the said policy, as the case may be; but if the said parties of the first part shall fail to pay the premiums of the said policy of insurance as the same shall become due and payable, then upon the application of the Guarantor, it shall be the duty of the Trustee hereinbefore named to declare all of the said indebtedness immediately due.

and payable and to advertise and convey the said property and distribute the proceeds as hereinbefore set out.

And it is further understood and agreed, That the parties of the first part shall keep the buildings on said premises insured in some reliable insurance company or companies in the aggregate sum of \$----- and if any loss should occur the same shall be payable to the said Trustee for the benefit of the holder or holders of the bond or bonds secured by this Deed in Trust, and if the said parties of the first part shall fail to insure said building for two hours, the parties of the second and third parts shall be at liberty to effect such insurance.

And it is further understood and agreed, That the parties of the first part shall pay all the taxes on the above mentioned property within the time prescribed by law, and in case the said Trustee or the said Guarantor or the holder of any bond or bonds hereby secured shall pay any sum or sums for insurance or for taxes or to remove any prior lien or incumbrances, the amount or amounts so expended shall be deemed principal money, bearing interest at the rate of six per centum per annum and be payable when the next installment of interest is due and shall be a lien upon the property herein conveyed and shall be secured by this Deed in Trust.

And it is further understood and agreed, That no delay or omission of the Trustee or of the Guarantor or of any bondholder hereunder or either of them to exercise any right or power arising upon any default hereunder shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein and every power and remedy herein provided to be exercised by the Trustee or the Guarantor or by the holder of any bond hereby secured may be exercised from time to time and as often as may be deemed expedient by the said parties or any of them.

It is further understood and agreed, That if default be made by the parties of the first part in the payment when due of any interest, taxes or insurance premiums and the said interest, taxes and insurance premiums or either of them or sums to remove prior incumbrances shall be paid by the Guarantor, such payment or payments by the Guarantor or its successor shall in no way operate as a discharge of the obligations hereunder or of the lien of this Deed in Trust for said sums, but the said Guarantor shall be subrogated to all the rights of the holder of said bond or

bonds to the amount of any payment or payments made by the said guaranteeing company as aforesaid.

And it is further stipulated and agreed, That if the said parties of the first part shall well and truly pay or cause to be paid the indebtedness hereby secured together with the interest and other charges as hereinbefore set out and shall fully and in all respects perform all the covenants and agreements herein obligatory upon them, then the trust hereby created shall cease and determine and this Deed shall become void; otherwise to remain in full force and effect.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

-----[Seal]

-----[Seal]

-----[Seal]

-----[Seal]

STATE OF NORTH CAROLINA, }
-----County. }

I, -----, a Notary Public in and for said County, do hereby certify that-----
and-----, his wife, grantors, personally appeared before me this day and acknowledged the execution of the foregoing Deed in Trust, and the said-----
-----being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and seal, this-----day of-----,
19-----.

-----Notary Public [Seal]

BANK CHARTER.

CERTIFICATE OF INCORPORATION

of

THIS IS TO CERTIFY, That we, the undersigned, do hereby associate ourselves into a corporation under and by virtue of the laws of the State of North Carolina, as contained in chapter 4 of the Public Laws of 1921, regulating banking in the State of North Carolina, and the amendments thereto, and do severally agree to take the number of shares of capital stock in the said corporation set opposite our respective names, and to that end do hereby set forth:

1. The name of this corporation is-----

2. The location of the principal office of the corporation in this State is at No.-----Street, in the-----of-----, County of-----

3. The objects for which this corporation is formed are as follows:

4. The total authorized capital stock of this corporation is-----Dollars (\$-----), divided into-----shares of the par value of-----Dollars (\$-----) each; but the corporation may organize and begin business when-----Dollars (\$-----) of the capital stock, composed of-----shares, shall have been subscribed for.

5. The names and postoffice addresses of the subscribers for stock, and the number of shares subscribed for by each, the aggregate of which being the amount of capital stock with which the company will commence business, are as follows:

Name.	Postoffice Address.	No. of Shares
-----	-----	-----
-----	-----	-----

6. The period of existence of this corporation is limited to-----years.

IN TESTIMONY WHEREOF, We have hereunto set our hands and affixed our seals, this the _____ day of _____, A. D. 19____

_____, (Seal)

_____, (Seal)

_____, (Seal)

Signed, sealed and delivered in the presence of

_____, Witness.

STATE OF _____ }
COUNTY OF _____ } ss.

This is to certify that on this _____ day of _____, A.D. 19____, before me, a _____, personally appeared _____

_____, who, I am satisfied, are the persons named in and who executed the foregoing certificate of incorporation of _____, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this the _____ day of _____, A.D. _____

[L. S.] _____

Before the bank shall begin business, it must file with the Corporation Commission, the following statement under oath:

_____, N. C.,

_____, 19____

I, _____ { President }
_____ { Cashier } of the

_____ of _____ N. C., do hereby certify that this Bank has filed Articles of Incorporation in the office of the Secretary of State of North Carolina, and that copies of the same, together with the Certificate of Incorporation, have been filed with the Clerk of the Superior Court of _____

County, and with the Corporation Commission, as required by law.

I further certify that \$-----of the capital stock of said Bank has been paid in in cash.

I further certify that the names of all the directors and officers of said Bank, with the date of their election or appointment, term of office, residence and postoffice address of each, and the amount of capital stock of which each is the owner in good faith, are as follows:

	Residence	P. O. Address	When Elected	Term of Office	Shares of Stock Owned in Good Faith
President:					
Directors:					
Cashier:					

I further certify that the attached sheet contains a true list of the stockholders of said Bank, with the postoffice address of each, and the amount of stock owned by each in good faith.

The population of the town in which the Bank will be located is-----, and there are now in operation there the following Banks:-----

President
Cashier

President
Cashier
of the Bank of-----

being sworn, says that the facts set out in the foregoing certificate signed by him are true in all respects.

Sworn to and subscribed before me the _____ day of _____, 19____

 To be signed by the President or Cashier.
 Capital stock must be paid IN CASH. If checks are given they must be collected before this certificate can be sworn to.
 Full list of stockholders must be attached.

 If after examination of the preceding statement filed with said Corporation Commission by said bank, the Corporation Commission is satisfied that the bank is lawfully entitled to commence business, it issues to the bank the following certificate:

**STATE OF NORTH CAROLINA
 CORPORATION COMMISSION
 RALEIGH**

THIS IS TO CERTIFY that _____ of _____ N. C., having filed its Articles of Incorporation, in the office of the Corporation Commission, and having otherwise complied with the law, is hereby authorized to begin business.

This _____ day of _____ A. D. 192____.

By order of the Commission:

 Chairman

 Clerk

RURAL COMMUNITY CHARTER

Application for the Incorporation of the _____ Community of _____ County, North Carolina

To J. Bryan Grimes,
 Secretary of State,
 Raleigh, N. C.

Sir:—We, the undersigned citizens, being a majority of the registered voters of _____ School District, of _____ County, hereby petition for the incorporation of _____ Community, of _____ County, as provided in

Chapter 123 of the Consolidated Statutes entitled "Rural Communities."

The first annual community meeting of _____
Community shall be held on the _____ day of _____
19____, at _____ o'clock, at _____,
and annually thereafter unless otherwise changed according to
a provision of said act.

In Testimony Whereof, we have hereunto set our hands and
affixed our seals, this the _____ day of _____,
19____

_____(Seal) _____(Seal)
_____(Seal) _____(Seal)
_____(Seal) _____(Seal)

STATE OF NORTH CAROLINA }
County of _____ } ss.

The execution of the foregoing application for charter of the
_____ Community of _____
County, North Carolina, was this day acknowledged before me
by the oath and examination of

The subscribing witnesses thereto.

In Testimony Whereof, I have hereunto set my hand and af-
fixed my official seal, this the _____ day of _____,
A. D. 19____

STATE OF NORTH CAROLINA }
County of _____ } ss.

I, _____, certify that the
above application for the incorporation of the _____
_____ Community, of _____
County, is signed by a majority of the registered voters of
_____ School District.

In Testimony Whereof, I have hereunto set my hand, this the
 ----- day of ----- A. D. 19-----

Note.—This certificate should be signed by the person charged with the duty of registering voters in the precinct, or by the Register of Deeds of the county.

CO-OPERATIVE ASSOCIATION CHARTER
APPLICATION FOR CHARTER
 of

 THIS IS TO CERTIFY, That we, the undersigned, do hereby associate ourselves for the purpose of forming a corporation under and by virtue of the provisions of Chapter 93 of the Consolidated Statutes, entitled "Co-Operative Organizations," and do severally agree to take the number of shares of stock in said corporation set opposite our respective names, and to that end do hereby set forth:

1. The name of this corporation is to be-----

 2. The location of the principal office of the corporation in this state is to be at-----County of-----
 The name of the agent therein and in charge thereof upon whom process against the corporation may be served is to be-----

 3. The objects for which this corporation is to be formed are as follows:

 The corporation shall also have power to conduct its business in all its branches, to have one or more offices either within or without the State, and to unlimitedly hold, purchase, mortgage, lease, convey and otherwise deal in and dispose of real and personal property of all kinds, subject always to the provisions of the laws of the State of North Carolina.

4. The total authorized capital stock of this corporation is to be-----dollars, divided into-----
 shares of the par value of-----each. The amount with which the corporation will begin business is to be-----
 -----composed of-----shares.

5. The names and postoffice addresses of the incorporators, and the number of shares subscribed for by each, are as follows:

Name.	Postoffice Address.	No. of Shares
-----	-----	-----
-----	-----	-----

6. The period of existence of this corporation is to be limited to ----- years.

In Testimony Whereof, We have hereunto set our hands and affixed our seals, this the ----- day of ----- A. D. -----

----- (Seal)
----- (Seal)

Signed and sealed in the presence of

STATE OF NORTH CAROLINA—County of -----

The execution of the foregoing application for charter of ----- was this day duly acknowledged before me by ----- and ----- two of the incorporators therein named, for the purposes therein expressed.

Witness my hand and official seal, this the ----- day of ----- A. D. 19-----

Notary Public.

**CERTIFICATE OF DISSOLUTION BY UNANIMOUS CON-
SENT OF ALL STOCKHOLDERS**
of the

----- Company.

The location of the principal office in this State is at No. -----, ----- street, in the ----- of -----, County of -----

The name of the Agent therein and in charge thereof, upon whom process against this corporation may be served, is -----

We, the subscribers, being all the stockholders of the ----- Company, a corporation of the State of North Carolina, deeming it advis-

able and most for the benefit of said corporation that the same should be forthwith dissolved, do hereby give our consent to the dissolution thereof, as provided by Chapter 22, Consolidated Statutes, entitled "Corporations," and do sign this consent to the end that it may be filed in the office of the Secretary of the State of North Carolina.

Witness our hands, this _____ day of _____
A. D. 19____

OFFICERS

President, _____ Residence _____
Vice-President, _____ Residence _____
Secretary, _____ Residence _____
Treasurer, _____ Residence _____

DIRECTORS

STOCKHOLDERS

STATE OF _____ }
COUNTY OF _____ } ss.

_____, the President, and
_____, the Secretary
of the above-named _____ Company,
being duly sworn, each on his oath says that the foregoing consent to the dissolution of said corporation has been signed by every stockholder of said company.

Subscribed and sworn to before me, this _____ day of _____
_____ A. D. 19____

STATE OF NORTH CAROLINA
Department of State
CERTIFICATE OF DISSOLUTION

To All to Whom These Presents May Come—Greeting:

WHEREAS, It appears to my satisfaction, by duly authenti-

ated record of the proceedings for the voluntary dissolution thereof by the unanimous consent of all the stockholders, deposited in my office, that the _____ Company, a corporation of this state, whose principal office is situated at No. _____ Street, in the _____ of _____, County of _____, State of North Carolina (_____ being the agent therein and in charge thereof, upon whom process may be served), has complied with the requirements of Chapter 22, Consolidated Statutes, entitled "Corporations," preliminary to the issuing of this Certificate of Dissolution:

NOW, THEREFORE, I, J. Bryan Grimes, Secretary of State of the State of North Carolina, do hereby certify that the said corporation did, on the _____ day of _____, 19____, file in my office a duly executed and attested consent in writing to the dissolution of said corporation, executed by all the stockholders thereof, which said consent and the record of the proceedings aforesaid are now on file in my said office as provided by law.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed my official seal at Raleigh, this _____ day of _____, A. D. 19____

Secretary of State

PROCEEDINGS FOR DISSOLUTION BY TWO-THIRDS VOTE OF STOCKHOLDERS.

RESOLUTION AND CERTIFICATE OF DIRECTORS of _____

COMPANY

The location of the principal office in this State is at No. _____ Street in the _____ of _____, County of _____

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is _____

We, the undersigned, being a majority of the Board of Directors of the _____ Company, do hereby certify that at a meeting of the said Board called for that purpose, and held on the _____ day of _____, A. D. 19____, said Board, by a majority of the whole Board, did adopt the following resolution:

RESOLVED, That in the judgment of this Board it is advisable, and most for the benefit of the _____ Company, that the same should be forthwith dissolved; and to that end it is ordered that a meeting of the stockholders be held on _____ the _____ day of _____ A. D. 19____, at the office of the Company, in the city of _____, to take action upon this resolution; and further, that the Secretary forthwith give notice of said meeting and of the adoption of this resolution, within ten days from this date, by publishing the said resolution, with a notice of its adoption, in the _____, a newspaper published in the city of _____, for at least four weeks, once a week, successively, and by mailing a written or printed copy of the same to each and every stockholder of this Company in the United States.

IN WITNESS WHEREOF, We have hereunto set our hands and affixed the corporate seal of said Company, this _____ day of _____, 19____

(Corporate Seal) _____

Attest:

Secretary.

CONSENT OF STOCKHOLDERS TO DISSOLUTION.

WHEREAS, On the _____ day of _____, A.D. 19____, the Directors of the _____ Company, by a majority vote of the whole Board, at a meeting called for that purpose, of which meeting every Director received at least three days' notice, did adopt a resolution in the words or to the effect following, to-wit:

RESOLVED, That in the judgment of this Board it is advisable, and most for the benefit of the-----

-----Company, that the same should be forthwith dissolved; and to that end it is ordered that a meeting of the stockholders be held on-----
the-----day of-----, A. D. 19-----
at the office of the Company, in the city of-----
to take action upon this resolution; and further, that the Secretary forthwith give notice of such meeting and of the adoption of this resolution, within ten days from this date, by publishing the said resolution, with a notice of its adoption, in the-----
-----, a newspaper published in the city of-----
-----, for at least four weeks, once a week successively, and by mailing a written or printed copy of the same to each and every stockholder of this Company in the United States.

AND WHEREAS, The Secretary of the said Company did give notice of the meeting of stockholders called by said resolution as required by law and the said resolution:

NOW, THEREFORE, We, the subscribers, being more than two-thirds in interest of all the stockholders, being met together in pursuance of said resolution and notice, have consented and do hereby consent that the said Company be forthwith dissolved as proposed in said resolution.

Witness our hands, this-----day of-----
A. D. 19----

-----	Shares.	-----	Shares
-----	Shares.	-----	Shares
-----	Shares.	-----	Shares

Attest:-----, Secretary.

STATE OF NORTH CAROLINA—County of-----
-----, being duly sworn, on his oath says that he is Secretary of the-----
Company; that he saw-----

-----,
being more than two-thirds in interest of the stockholders of said Company, at a meeting duly called for that purpose, as above recited, sign the foregoing certificate of consent as their voluntary act and deed, and that deponent at the same time subscribed the same as attesting witness; and deponent further says, that on

the _____ day of _____, A. D. 19____, be mailed a printed copy of the resolution above recited, with a notice of the adoption thereof, to each and every stockholder of said Company residing in the United States, and also caused the same to be duly published as required by the said resolution; and deponent further says that the said resolution of the Board of Directors was duly adopted upon lawful notice as in the certificate above recited.

Secretary.

Sworn and subscribed before me, this _____ day of _____, A. D. 19____.

LIST OF DIRECTORS AND OFFICERS AT TIME OF DISSOLUTION

As required by Chapter 22 of the Consolidated Statutes, entitled "Corporations," the Board of Directors of the _____ Company render the following statement to be filed in the office of Secretary of State of the State of North Carolina upon the dissolution of said Company:

The principal office of the Company is at No. _____ Street, in the city of _____, County of _____. The following is a list of the names and residences of the Directors and Officers of said Company:

Names.

Residences.

The Officers of the Company are:

President, _____ Secretary, _____

Vice-President, _____ Treasurer, _____

Dated _____, 19____

The foregoing statement is correct and true.

President.

Attest _____

(Seal)

Secretary.

STATE OF NORTH CAROLINA—County of_____

_____, of lawful
age, being duly sworn according
to law, doth depose and say that
he is_____of the_____,
a newspaper printed and publish-
ed in the City of_____

(Attach Notice Here.)

and County of_____
and State of North Carolina, and
that the notice, of which the an-
nexed printed slip is a true copy,
has been published in said news-
paper once a week successively
for four weeks, commencing on
the_____day of
_____, 19____Sworn to and subscribed before me, this_____day of
_____, 19____.STATE OF NORTH CAROLINA,
Department of State.CERTIFICATE OF FILING OF CONSENT BY STOCKHOLD-
ERS TO DISSOLUTION.

To All to Whom These Presents May Come—Greeting:

WHEREAS, It appears to my satisfaction, by duly authenti-
cated record of the proceedings for the voluntary dissolution
thereof deposited in my office, that the __________ Company,
a corporation of this State, whose principal office is situated at
No. _____ Street, in the _____
of _____ County of _____State of North Carolina (_____
being the agent therein and in charge thereof, upon whom proc-
ess may be served), has complied with the requirements of

Chapter 22, Consolidated Statutes, entitled "Corporations," and the amendments thereto, preliminary to the issuing of this Certificate that such consent has been filed:

NOW, THEREFORE, I, J. Bryan Grimes, Secretary of State of the State of North Carolina, do hereby certify that the said corporation did, on the _____ day of _____, 19____ file in my office a duly executed and attested consent in writing to the dissolution of said corporation, executed by more than two-thirds in interest of the stockholders thereof, which said certificate and the record of the proceedings aforesaid are now on file in my said office as provided by law.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed my official seal, at Raleigh, this _____ day of _____, A.D. 19____.

Secretary of State.

AFFIDAVIT OF PUBLICATION OF CERTIFICATE OF DISSOLUTION

of

_____, Company
STATE OF _____ }
COUNTY OF _____ } ss.

_____, the Secretary of the _____ Company, being duly sworn, on his oath says that the board of directors of the said company have caused the Certificate of Dissolution of the _____ Company, a copy whereof is hereto annexed, issued by the Secretary of State of the State of North Carolina, dated the _____ day of _____, 19____, to be published in the _____, a newspaper published at the city of _____ and circulated in the County of _____ being the county in which said company has been located and conducting its business, for the period of four weeks, successively, at least once in each week, commencing on the _____ day of _____, 19____, as required by Chapter 22, Consolidated Statutes, entitled "Corporations."

Sworn and subscribed before me, the-----day of-----
-----, A. D. 19-----

STATE OF NORTH CAROLINA

Department of State

I, J. BRYAN GRIMES, Secretary of State of the State of North Carolina, do hereby certify that-----
Secretary of the-----Company,
did, on the-----day of-----, A. D. 19-----
file in my office affidavit of the publication of the preliminary certificate of dissolution of said corporation as required by Chapter 22 of the Consolidated Statutes, entitled "Corporations."

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this the-----day of-----
A. D. 19-----

Secretary of State

CERTIFICATE OF SURRENDER OF CORPORATE FRANCHISES

of

----- Company,

The location of the principal office in this State is at No.-----
street, in the-----of-----
County of-----

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is-----

We, the subscribers, being all the incorporators named in the certificate of incorporation of the-----
----- Company,
a corporation of North Carolina, do hereby certify that no part of the capital of said corporation has been paid, and the business for which the corporation was created has not been begun.

And we do hereby surrender all our corporate rights and franchises which we have obtained by the creation of said corporation, to the end that said corporation may be forthwith dissolved.

Witness our hands and seals, this _____ day of _____
 _____, A. D. 19____

State of _____ }
 County of _____ } ss.

being severally duly sworn, on their oaths say that the facts stated and certified in the foregoing certificate are true.

Subscribed and sworn to be }
 fore me, this _____ day of }
 _____ A. D. 19____ }

APPLICATION FOR DOMESTICATION BY A FOREIGN CORPORATION

THE _____ Company
 organized under the Laws of the State of _____,
 does hereby make the following statement, in compliance with
 the provisions of Section 1181 of The Consolidated Statutes of
 North Carolina:

FIRST—The name of the corporation is _____

SECOND—The location of the registered office is at No. _____
 _____ Street, _____ and the location of the
 principal office in North Carolina is at _____,
 N. C., County of _____, and
 _____ is the agent upon whom process
 may be served.

THIRD—The character of the business is _____

PROCEEDINGS FOR RECEIVERSHIP.

IN THE SUPERIOR COURT
 ----- TERM, 19----

----- COUNTY.
 }
 NORTH CAROLINA

----- BANKING & TRUST COM-
 PANY, a corporation of North Carolina,
 and ----- NATIONAL BANK, a
 corporation organized under the laws of
 the UNITED STATES and located at
 -----, N. C., on behalf of them-
 selves and of other creditors of -----
 COMPANY, a corporation of North Caro-
 lina, having its office in the city of
 -----, who may join in this proceed-
 ing,

COMPLAINT.

vs.

----- COMPANY, a corporation
 of North Carolina, having its principal
 office or place of business in -----

The plaintiffs, complaining of the defendant, allege:

1. That plaintiff, ----- BANKING & TRUST COM-
 PANY, is a corporation chartered under the laws of this State,
 and has its principal office or place of business in the city of ----
 -----, and is engaged in carrying on the banking business
 in the usual acceptance of that term, and was at all the times
 hereinafter mentioned so engaged. That ----- National
 Bank is a corporation organized under the banking laws of the
 United States; has its principal office and place of business in
 the city of -----, and was so engaged at all the times
 hereinafter mentioned.

2. That ----- COMPANY is a corporation chartered
 under the laws of this State; has its principal office and place
 of business in the city of -----, and is engaged in the
 manufacture and sale of brick and ice, and in the distribution
 and sale of coal and wood. That it is the owner of a portion of
 the capital stock of ----- Brick Company, of -----
 Ice Company, and of ----- Ice Company, all of which are
 corporations of this State. The said defendant is a creditor of
 ----- and wife, trading as the ----- Laundry,

and of the ----- Ice Company, and of other persons, firms or corporations.

3. That until his death on or about -----, 19---, ----- was president of defendant, and was very active in its management. That on said-----day of-----, ----, while traveling on the business of defendant, the said ----- suddenly died; and since his death the affairs of the defendant company have been very much embarrassed and disturbed.

4. That the defendant is very largely indebted, and its debts and liabilities are believed to aggregate about the sum of----- (\$-----) Dollars, all or practically all of which is now due. That among its other indebtedness, defendant owes the plaintiff, ----- Banking & Trust Company, the principal sum of ----- (\$-----) Dollars, in notes and amounts as follows: -----

Besides the principal the defendant owes to the said ----- Banking & Trust Company interest on the above amounts since their respective maturities, and all of said items of indebtedness are now due.

5. That the defendant is indebted to the plaintiff, ----- National Bank, in the following amounts, to-wit: -----

-----; neither of which notes have been paid; and both are now due with interest thereon from the dates of their respective maturities. And the said defendant is liable as an endorser or guarantor to said plaintiff in the following amounts, to-wit: -----

-----; all of which are past due, with interest upon said items from the dates of their maturities.

6. That the defendant is largely indebted to other persons, the exact amount of which plaintiffs are not able to state; but they are informed that the indebtedness of defendant amounts to at least ----- Dollars; and that all of the said indebtedness is now due and collectible. This suit is brought by plaintiffs for themselves and on behalf of all creditors of defendants who may join herein as parties or claimants.

7. That the capital stock of defendant, issued and outstanding, amounts to ----- (\$-----) Dollars; and is in -----

----- (----) shares, each in the par value of-----
 (\$-----) Dollars; and its principal stockholders are as follows, to-wit:

-----	shares,	-----	par value
-----	shares,	-----	par value
-----	shares,	-----	par value
-----	shares,	-----	par value

all of which stockholders reside in -----

8. That among the assets of defendant are the following stocks, to-wit:

 and it owns small amounts of stock in various other corporations. Defendant also owns a note secured by mortgage on-----
 and wife trading as the ----- Laundry, for -----
 -----and it owns a note against ----- Brick Company for \$-----

9. That plaintiffs are informed and verily believe, and on such information and belief allege, that on account of the large indebtedness of defendant, and the nature of its assets, and the fact that its debts are due, and due to other complications arising since the death of its late president, it is not practical for defendant to continue to operate its business. That its credit is seriously impaired, and there is danger that its creditors may bring suit; and in an effort of the creditors to secure a priority of lien by levying attachment its assets may be wasted and an equitable distribution of its assets among its creditors would be impossible. Plaintiffs believe that if the assets of defendant are prudently and carefully administered by receivers to be named by this Honorable Court, enough money will be realized to pay the debts of the defendant in full, and possibly something may be saved for the stockholders. On the other hand, if receivers be not appointed, and if the property of defendant be left subject to the levy by execution, plaintiffs do not believe that enough will be realized to pay the debts; and they think it entirely probable that under such circumstances some debts would be paid in full, while other creditors would be paid much less than the face of their assets.

10. That the defendant admits that it is impracticable under the present circumstances for it to continue to manage its business, and believes with the plaintiffs that it is to the interests of all

persons, creditors and stockholders, that the assets of defendant be put under the protection of the Court, and administered by the Court to the end that if a distribution among creditors and stockholders be necessary the same may be equitable, with due regard to the rights of all creditors and the priorities, if there be any, of the creditors, and without the waste and loss which would result from taking judgment and levying execution. And the said defendant has consented that a decree may be rendered appointing receivers to take charge of its assets, and to administer the same under the orders and direction of this Court.

11. That a summons has been duly issued in this action and served upon defendant.

12. That on account of the large interest of the Estate of the late-----in defendant, and in view of the fact that he is an endorser on a large amount of the notes of defendant, the plaintiffs believe that it would be wise for the Court to appoint two receivers.

WHEREFORE, Plaintiffs respectfully pray for a decree:

1. Enjoining and restraining defendant from disposing of any of its property or assets, except to deliver the same to the receivers to be appointed by this Court.

2. For the appointment of receiver or receivers to take charge of all the property and effects of the defendant; to hold the same and administer the same under the direction of this Court.

3. For such other and further relief as to the Court may seem just and for the costs of this action.

Attorneys for Plaintiffs.

(Usual Verification by Plaintiffs)

ORDER APPOINTING TEMPORARY RECEIVERS.

Upon consideration of the complaint in the above entitled action, duly verified, and treated as an affidavit, together with the answer of the defendant, it appears to the Court that good cause has been shown for the appointment of a receiver of all the assets, properties and effects of the defendant;

WHEREUPON, upon motion of _____ attorney for plaintiff, it is ordered, decreed and adjudged by the Court that _____ and _____ be, and they are, hereby appointed temporary receivers of all the properties, assets and effects of the defendant, _____; and upon the execution and filing with the Clerk of this Court, of a joint bond in the usual form of receiver's bond, with good and sufficient surety, to be approved by the Clerk, in the penal sum of _____ (\$_____) Dollars, conditioned for the faithful performance by said receivers of the duties imposed upon them, the said receivers are hereby authorized and directed to take possession of the properties, assets and effects of the said _____, the defendant, and hold the same subject to the further orders of the Court, and to continue to operate the business of the corporation until further orders from the Court.

Defendant and others interested are notified to show cause before me at the Judge's chamber, in the courthouse of this county, on the ___ day of _____ 19____, why the said receivership should not be made permanent.

Let summons and the substance of this order be published as provided by law.

Judge.

RECEIVER'S BOND.

KNOW ALL MEN BY THESE PRESENTS, that we _____ and _____ as principals, and _____ as surety, are held and firmly bound unto _____ Company, a corporation, the defendant, in the sum of _____ Dollars, to the payment of which well and truly to be made we bind ourselves, our executors, administrators and successors and assigns, firmly by these presents.

Signed and sealed, this the ___ day of _____, 19____.

The condition of the above obligation is such, that whereas _____ and _____ the above bounden, have been appointed temporary receivers in the above entitled action: Now, therefore, if the said _____ and _____ shall well and

faithfully discharge their duties as such receivers, then this obligation is to be void; otherwise to remain in full force and effect.

----- (SEAL).

----- (SEAL).

The above bond is hereby approved as to form, sufficiency and solvency. This ____ day of _____, 19____.

CLERK SUPERIOR COURT
OF ----- COUNTY.

NOTICE TO CREDITORS, ETC.

To all stockholders, creditors, dealers, and others interested in the affairs of ----- Company:

You and each of you are hereby notified that the above entitled action has been instituted in the Superior Court of ----- County, and that summons has been issued therein returnable to the ----- Term of this Court, and that service of same has been duly accepted. Complaint and answer have been filed; and any person interested as stockholder, creditor, dealer, claimant or otherwise in the affairs of said company may appear, make themselves parties, prove claims, or take such other action as they may be advised.

----- and ----- have been appointed temporary receivers of all the properties, assets and effects of defendant; and you are hereby notified that you may show cause, if any you have, why the receivership shall not be made permanent, before His Honor, ----- Judge of the Superior Court at the Judge's room in the Courthouse of ----- County, on ----- the ___ of -----, 19____.

Hereof fail not to take due notice. This ____ day of _____, 19____.

Clerk Superior Court, ----- County.

ORDER CONTINUING HEARING.

THIS CAUSE coming on to be heard upon the notice heretofore given to show cause why the temporary receivership should

not be made permanent, and the temporary receivers having filed in the Clerk's Office a report of the proceedings so far; and on account of the business of the ----- Docket not being completed, the Court is not able to hear the said motion or to consider the report of the receivers;

IT IS ORDERED That the said motion to show cause why the receivership shall not be made permanent and the report of the temporary receivers be postponed until ----- the --- day of -----, at --- o'clock-- M., when and where any creditor, claimant, stockholder or person interested may be heard upon any matters touching the properties of defendant or its management, or the report of the receivers.

----- and ----- are continued as temporary receivers until said day, and the bond heretofore given by them will remain in full force and effect.

This --- day of -----, 19----

Judge Presiding.

ORDER APPOINTING PERMANENT RECEIVERS AND FOR OTHER PURPOSES.

THIS CAUSE coming on to be heard pursuant to a former order in this cause, to show cause why the receivership heretofore decreed should not be made permanent;

AND IT APPEARING TO THE COURT that the defendant is so greatly embarrassed that it cannot successfully carry on its business, and that it is in imminent danger of insolvency with an impaired capital stock and a large number of debts now due upon which suits are threatened; and the defendant having admitted the necessity for a receivership;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT, That the receivership heretofore decreed by an order in this action, be and the same is hereby made permanent.

IT IS FURTHER ORDERED that ----- and -----
----- be and they are hereby appointed permanent receivers of all the properties and effects of the defendant, with all the rights and powers vested in receivers of corporations by the laws of this State, including the right to vote all stocks in other corporations heretofore owned by defendant.

THIS ORDER shall become effective upon the giving of a joint receivers' bond in the penal sum of ----- (\$-----) Dollars, to be approved by the Clerk of this Court, and conditioned according to law for the faithful discharge by said receivers of their duties as such.

IT IS FURTHER ORDERED that the said receivers shall as soon as practicable, and within five (5) days, publish in some newspaper having a general circulation and printed in the city of -----, once a week for four (4) successive weeks, a notice to all creditors, claimants, stockholders and parties interested in ----- Company, the defendant, to present all claim they may have of any character whatsoever against the said ----- Company, together with a statement of the securities or priorities claimed; and further notifying all such persons, creditors, claimants, stockholders and parties interested that all claims not presented to the receivers before the ---- of -----, 19---, shall be barred from participation in the distribution of the assets of said defendant. After the time shall have elapsed for filing proofs of claims, demands, etc., as hereinabove provided, the receivers shall report their findings, setting forth the creditors and the amounts the receivers shall find due to each creditor, and the securities and priorities, if any, appertaining to each claim, and the receivers shall make a report of the same, to the ----- Term of ----- Superior Court, to be holden on the first Monday in -----, 19---. Any creditor, claimant, stockholder, or party interested in the affairs of the defendant, may at any time before the last day of the ----- Term, 19---, of said Court, commencing-----, 19---, file exceptions or objections to the findings of the receivers to his claim or to any other claim or demand allowed or rejected by said receivers. But no exception shall be allowed to be filed after the end of the said Civil Term of ----- Superior Court, which shall commence on -----, 19---. The receivers, the defendant and all creditors, claimants, parties interested and stockholders are advised to comply strictly with the time limits provided in this order, to the end that the affairs of defendant may be speedily ascertained and proper and appropriate action in the premises taken.

IT IS FURTHER ORDERED THAT the receivers shall carry on the business of the defendant in the manner and respects

herein set forth subject at all times to the further directions of this Court.

1. The receivers are directed to pay out of the first monies available for that purpose, the indebtedness due to ----- Trust Company of -----, the principal of which is \$-----, with interest thereon since the --- day of -----, 19---, and to ----- National Bank, of -----, \$-----, with interest thereon from -----, 19---, provided said Trust Company and said Bank deliver all the collateral held by them to the receivers, to be held by such receivers subject to the further orders of this Court. The purpose of this order is to protect from sale the collaterals deposited with the said creditors, which collaterals are believed to be greatly more valuable than the debts which they secure.

2. The said receivers are hereby directed not to renew the leases with ----- Company and ----- Company, or the present owner thereof. It appears to the Court that continuance of the leases of these two plants would not be profitable, and when the present leases expire -----, 19---, the receivers are directed to surrender the same to their respective owners.

3. The receivers are hereby directed and empowered to attend stockholders meetings of any companies in which ----- Company may own stock, and to vote the stock of said ----- Company as they may think best for the interest of said company. They are specifically directed to attend any meeting of ----- Company, in which company ----- Company are the majority stockholders and to vote the interest of the defendant in said Company in favor of a suspension of its operations during the winter season, and in favor of the purchase of such ice as may be necessary during said period of suspension to comply with any contracts of ----- Company and ----- Company.

4. The receivers are further directed to proceed forthwith in the diligent collection of any debts owing to ----- Company whether the said debts be in the form of accounts or bills receivable, or of notes or bonds whether secured by mortgage or otherwise or unsecured; and they are authorized to offer for sale in the manner best calculated to obtain full value the following properties: (Here is enumerated certain real and personal property.)

They are authorized to advertise sales under any and all mortgages in favor of ----- Company. Wherever personal property is pledged or mortgaged, if necessary to effect the sale of the same, the receivers are authorized to institute appropriate actions, Claim and Delivery, or other process. And if necessary to enforce the collection of any accounts, notes or choses in action, the receivers are authorized to bring suit or suits to enforce collection of the same.

5. The receivers are authorized to offer for sale the ---- shares of stock in ----- Company belonging to ----- Company. If the receivers shall receive any offers to purchase any of the properties aforesaid which in their opinion it is advantageous to accept, they are directed to make a report of these offers to this Court, but they need not make further report or wait for further directions to collect the accounts, notes, etc., due or to enforce the collection of securities, mortgages, etc.

6. The receivers are directed to confer with such common carriers as have contracts with defendant for icing cars and ascertain whether the carriers will agree to cancellation of said contracts and will report the information they shall obtain to the Court.

7. The receivers are directed further to reduce the expense of the business of ----- Company as much as it is practicable to do. To this end they are authorized to reduce the number of employees of said company and to keep on the payroll only such persons as are necessary. They are authorized further, if they think it advisable to do so, to change the offices so as to reduce expenses, and in a general way they are directed to confine the business performed by them to the continuance of the wood and coal business of -----
----- Company in the city of -----, and to its selling contract with ----- Brick Company, and such brokerage and ice business as they can carry on incidentally and with reasonable expectation of profit. This part of this order does not forbid the receivers to carry on the ice business through the -----
----- Ice Company during the coming summer season if it shall then appear profitable, but the decision whether the receivers shall procure the continuance of the ice business of -----
----- Ice Company, hereafter is reserved for further consideration.

8. The conduct of the receivers in the employment of -----
----- to take charge of the office and business of -----
Company for the receivers at a salary of \$300 per month is hereby
approved; and they are directed to continue his employment at
said salary until further orders of this Court. The Court also
approves the employment of -----, expert accountants,
in making the audit and the receivers are directed to pay their
charge \$----- therefor.

9. The receivers are directed to pay the bills of -----
Coal Company, ----- Coal Company and -----
Anthracite Company for ----- cars of coal. This coal was consigned
by the said coal companies to ----- Company but had
not been received at the time the receivership was decreed. It
was afterwards billed to the receivers, accepted by the receivers,
taken from the cars and sold or is being sold now by the receivers,
and the receivers are directed to pay for the same as being coal
delivered to them and not to ----- Company.

10. The acts of the receivers in paying the employees for
services rendered to the receivers after the receivers took charge
of the business and for the week preceding the receivership, for
which the employees had priority under the statutes of this State,
are hereby approved. The payment of salaries since the ---- of
-----, 19--, and since the receivers took charge is also
ratified and approved.

11. The receivers are further directed to hold the fund of \$-----
----- mentioned in paragraph -----, subsection --, of their r
port, as a special fund for which coal is to be furnished to the
customers if the same be available, and the money returned to
the customers if coal be not available. And they are directed
to so treat the special accounts mentioned in said paragraph and
unless those purchasers can be furnished with the coal they
ordered the money deposited by them to be returned. The refunds
already made under this account and mentioned in said para-
graph are approved.

12. It appearing that a Notice was published in the -----
Times, notifying defendant, its stockholders, claimants, credi-
tors, etc., of the pendency of the action and the purpose thereof,
and of the proposition to make the receivership permanent, for
the time required by law, and that the cost of said publication
was \$-----, the receivers are directed to pay for the said adver-

tising to the ----- Times; and the receivers are directed to pay for the printing of the notice heretofore ordered.

13. The receivers are authorized, if they see fit to do so, to employ counsel whose compensation shall be fixed by the Court hereafter.

The hearing of the motion to show cause why the receivership should not be made permanent was set for -----, but has been postponed from time to time until this day.

This -----, 19----

-----,
Judge Presiding.

NOTICE TO CLAIMANTS, ETC.

To all parties holding claims against -----
----- Company, a corporation of North Carolina, and to all persons interested in its affairs as stockholders, claimants, creditors or otherwise; and to ----- Company, defendant:

You and each of you are hereby notified to present your claims, duly verified, to the undersigned, on or before the ----- day of -----, 19----, or your claims will be barred from participation in the distribution of the assets of said ----- Company.

The said persons, claimants, creditors, stockholders or parties interested in ----- Company are further notified that the receivers will take and state an account of the affairs of ----- Company, giving a list of all creditors and the amounts for which their claims are allowed, and file the said report in the office of the Clerk of the Superior Court on or before the first day of the ----- Term of ----- Superior Court, to be holden on -----; and that any person interested as creditor, claimant, stockholder or otherwise in the affairs of defendant, may except to the allowance or disallowance of any claim or part of claim, but that such exception must be filed not later than the last day of the ----- Term of Court to be holden in -----, 19----, the said Term commencing on the ----- day of the said month of ----- No exception to the allowance or disallowance of any claim will

be permitted to be filed after the adjournment of said _____
 _____ Term.

THIS NOTICE is given pursuant to an order of His Honor
 _____, Judge of the Superior Court, ren-
 dered this day, wherein the undersigned were appointed perma-
 nent receivers.

THIS _____ 19____

 Permanent Receivers,
 _____ Company.

MINUTES OF ANNUAL MEETING OF STOCKHOLDERS.

The annual meeting of stockholders was held at the office of
 the corporation, _____ on the
 _____ day of _____ 19____, at _____ M

The meeting was called to order by Mr. _____,
 who, upon motion, duly made, seconded and carried, was chosen
 chairman, and Mr. _____ was appointed sec-
 retary of the meeting.

The secretary presented the list of stockholders entitled to
 vote at this meeting, and reported that the following stockhold-
 ers were present in person :

Names.

No. of Shares.

and that the following stockholders were represented by proxy :

Names.

Names of Proxies.

No. of Shares.

Total

The chairman thereupon announced that a quorum was in at-
 tendance at the meeting.

The proxies presented were ordered to be filed with the sec-
 retary of the meeting.

The secretary presented and read a copy of the notice of the
 meeting, together with proof of the due mailing thereof to each
 stockholder of the corporation at least _____ days before the
 meeting, as required by the by-laws.

The stock ledger of the corporation was produced and remained during the meeting open to inspection.

Upon motion, duly made, seconded and carried, the minutes of the last preceding meeting were read and approved.

Messrs. ----- and -----
(neither of them being a candidate for the office of director) were appointed inspectors of election and duly sworn.

The meeting then proceeded to the election of directors, by ballot, in accordance with the by-laws, and the polls were opened at ----- M., and the stockholders prepared their ballots and delivered them to the inspectors.

The annual statement of the directors was presented and read, and ordered to be received and filed with the Secretary.

The reports of the ----- for the past year ----- presented and read and ordered to be received and filed with the Secretary.

The polls having remained open, were ordered closed and the inspectors presented their report in writing, showing that the following persons, stockholders of the corporation, had received the greatest number of votes:

The chairman thereupon declared that the above named persons were duly elected directors of the corporation.

Upon motion, duly made, seconded and carried, the secretary was directed to file with the records of the corporation, for the purpose of reference, the following papers:

- (1) List of stockholders entitled to vote at this meeting.
- (2) Proxies presented at the meeting.
- (3) Notice of meeting and proof of mailing thereof.
- (4) Inspector's Oath and Report.

No further business coming before the meeting, upon motion, duly made, seconded and carried, the same adjourned.

-----,
Secretary of the Meeting.

NOTICE OF ADJOURNED MEETING OF STOCKHOLDERS
OF----- CORPORATION.

-----, N. C., ----- 19-----

To the Stockholders of----- Corporation:

You, and each of you, are hereby respectfully notified that pursuant to a resolution adopted by the stockholders of-----

----- Corporation at the first meeting held in the Town of-----, N. C., on-----,

19-----, the said stockholders' meeting will reassemble on -----, the----- day of-----,

19-----, at----- o'clock----- M., at the residence of----- in the Town of-----, N. C.

The purpose of said meeting is the adoption of by-laws for said corporation, and the transaction of such other business as may come before said meeting.

You are respectfully requested to be present.

-----,
President.

WAIVER OF NOTICE OF ADJOURNED MEETING OF
STOCKHOLDERS OF----- CORPORATION.

----- N. C., ----- 19-----

We, and each of us, being all of the stockholders of----- Corporation, do hereby accept service of notice of a meeting of the stockholders of said corporation to be held at the residence of----- in the Town of-----, N. C., on-----, the----- day of-----, 19-----, at----- o'clock----- M.

And we do hereby waive all other and further service of said notice of said meeting, and the purpose of the same; and we further waive all the requirements of the laws of the State of North Carolina, both as to notice of time, place and object of said meeting, and waive all publication of the same; and we agree to be present and further agree to the transaction of such business as may come before said meeting.

Witness our hands this----- day of-----, 19-----

Witness:

NOTICE OF ADJOURNED MEETING OF DIRECTORS OF
----- CORPORATION

-----, N. C., -----, 19-----
To the Directors of ----- Corporation:

You, and each of you, are hereby respectfully notified that pursuant to a resolution adopted by the board of directors of ----- Corporation at the first meeting of the same held in the ----- of -----, N. C., on -----, 19-----, the said board of directors' meeting will reassemble on -----, the ----- day of -----, 19-----, at ----- o'clock ----- M., at the residence of ----- in the Town of -----, N. C.

The purpose of said meeting is the transaction of such business as may come before the same relating to the affairs of the corporation.

You are respectfully requested to be present.

-----,
President.

WAIVER OF NOTICE OF ADJOURNED MEETING OF
DIRECTORS OF ----- CORPORATION.

-----, N. C., -----, 19-----
We, and each of us, being all of the directors of ----- Corporation, do hereby accept service of notice of a meeting of the directors of said corporation to be held at the residence of ----- in the Town of -----, N. C., on -----, the ----- day of -----, 19-----, at ----- o'clock ----- M.

And we do hereby waive all other and further service of said notice of said meeting, and the purpose of the same; and we further waive all the requirements of the laws of the State of North Carolina, or the by-laws of this corporation, both as to notice of time, place and purpose of said meeting, and waive all publication of the same; and we agree to be present and further agree to the transaction of such business as may come before said meeting.

Witness our hands this _____ day of _____, 19____

Witness:

CERTIFICATE OF EXTRACT FROM BY-LAWS.

NORTH CAROLINA,

_____COUNTY

I, _____, Secretary of the
 _____Company, do hereby certify,
 that the foregoing is a true and correct copy of Sec. _____,
 Article _____ of the By-laws of the _____
 Company; and in testimony thereof I have hereunto affixed my
 official signature, and the seal of this company, at its office in the
 city of _____, North Carolina, on this _____
 day of _____, 19____

(Corporate Seal)

 Secretary.

NOTICE OF DIVIDEND.

_____ Company
 _____ N. C., _____ 19____

To the Stockholders of _____ Company:

Notice is hereby given that the Board of Directors of the
 _____Company, at a meeting held on
 this day, declared a dividend of six per cent on the preferred
 stock and three per cent on the common stock of this corpora-
 tion; the same being payable on _____, 19____,
 to all stockholders of record on _____, 19____

Books for the transfer of stock will close at _____ o'clock
 _____ M., _____, 19____, and open at
 _____ o'clock _____ M., _____, 19____

 Treasurer.

State Department of Revenue
CORPORATION INCOME TAX RETURN
 For Calendar Year Ended December 31, 1921.

(MAKE AFFIDAVIT ON THIS PAGE FOR EITHER BLANK)

Name
 Kind of business
 Business address

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return made in good faith, for the taxable period as stated, pursuant to the Revenue Act for 1921 and the Regulations issued under authority thereof.

Sworn to and subscribed before me,
 this..... day of....., 1922 **President**

 **Treasurer**
 (Official capacity)

What was the net income for the calendar year 1921
 returned to the U. S. Government before taking
 off any exemption allowed by the Federal law or
 State income tax \$.....
 Bad debts charged off in Federal return and not de-
 ductible in this return \$.....
 Total \$.....

DEDUCTION

Dividends not taxable by State, included in Fed-
 eral return \$.....
 Net income under State law, all of which is taxable \$.....
 Tax at 3 per cent \$.....

If above form is used, it is not necessary to fill out this form

GROSS INCOME

1. Gross sales, less returns and allowances . . \$.....
 Plus inventory beginning year \$..... \$.....
 2. Less cost of raw materials \$.....
 \$.....
 \$.....
 Wages and labor \$.....
 Total raw materials, wages and labor . . \$.....
 Plus inventory beginning year \$.....
 Gross income from operation \$.....
 3. Gross income from operations other than trad-
 ing or manufacturing \$.....
 4. Taxable interest received from all sources . . \$.....
 5. Rentals \$.....
 6. Royalties \$.....
 7. Income received from partnership \$.....

8. Total dividends received from foreign corporations, no part of which corporation's income is subject to income tax under the State law. Attach statement showing names of corporations and amount received from each	\$.....
9. Total dividends received from foreign corporations, part of which corporation's income is subject to income tax under the State law. Attach statement showing names of corporations and amount received from each	\$.....
10. Gross income from all other sources subject to tax	\$.....
11. Total income 3 to 10	<u>\$.....</u>
12. Total gross income, 1 to 11	\$.....

DEDUCTIONS

1. All the ordinary and necessary expenses paid during the income year in carrying on any trade or business	\$.....
2. Reasonable compensation of officers	\$.....
3. Rentals or other payments required to be made as a condition of the continued use or possession, for the purpose of the trade of property to which the taxpayer has not taken, or is not taking title, or in which he has no equity	\$.....
4. All interest paid during the income year on indebtedness, except interest on obligations contracted for the purchase of nontaxable securities. Dividends on preferred stock shall not be deducted as interest	\$.....
5. Taxes for the income year, except taxes on income and war profits and excess profits taxes, inheritance taxes, and taxes assessed for local benefit of a kind tending to increase the value of the property assessed	\$.....
6. Dividends from stock in any corporation the income from which shall have been assessed and the tax on such income paid by the corporation under the provisions of this act: Provided, that when only part of the income of any corporation shall have been assessed under this act only a corresponding part of the dividends received therefrom shall be deducted. Attach statement of such dividends	\$.....
7. Losses sustained during the income year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit	\$.....
8. Debts ascertained to be worthless and charged off within the taxable year if the amount has previously been included in gross income in a return under this act	\$.....
9. A reasonable allowance for depreciation and obsolescence (if any)	\$.....
(b) Depletion (if any)	\$.....
10. Reserve for bad debts, in case of taxpayers who keep regular books of account	<u>\$.....</u>
11. Total deductions

12. Difference between gross income (line 12, page 1) and deductions, plus or minus, gain or loss from sale, or other disposition of property, including liquidating dividends . . . \$.....

Cost, or Value, Jan. 1, 1921, if

Kind of Property	Owned Prior to That Date	Selling Price	Gain or Loss
.....
.....
.....
.....
.....
			Gain or loss, \$.....

13. Net taxable income \$.....
 Less contributions or gifts made within the taxable year to corporations or associations, as enumerated in Section 306, Article 3, not exceeding 15 per cent of the net income shown on line 13 \$.....

14. Net income subject to tax \$.....

15. Three per cent tax on net income shown on line 14 . . . \$.....

SCHEDULE OF DEPRECIATION AND DEPLETION No. 9

Kind of Property	Cost, or Value, Jan. 1, 1921	Rate	Depreciation
.....	\$.....
.....	\$.....
.....	\$.....

BALANCE SHEETS

(Give dates)

Assets	Begin- ning of Year	Close of Year
Cash on hand and in banks	\$	\$
Accounts receivable	\$	\$
Notes receivable	\$	\$
Stocks of other corporations in North Carolina	\$	\$
Stocks of other corporations not in North Carolina	\$	\$
Bonds of North Carolina	\$	\$
U. S. Bonds	\$	\$
Bonds of corporations	\$	\$
Inventories:		
.....	\$	\$
.....	\$	\$
.....	\$	\$
.....	\$	\$
Fixed Assets:		
.....	\$	\$
.....	\$	\$
.....	\$	\$
.....	\$	\$
Deferred Assets:		
.....	\$	\$
.....	\$	\$
.....	\$	\$
Total assets	\$	\$
Liabilities:		
Notes payable	\$	\$
Accounts payable	\$	\$
Accrued items	\$	\$
Other liabilities	\$	\$
Reserve for bad accounts	\$	\$
Reserve for depreciation	\$	\$
Other Reserves:		
Capital stock—Common	\$	\$
Preferred	\$	\$
Surplus	\$	\$
Undivided profits	\$	\$
Total liabilities	\$	\$

(Two blanks for report are included in this form. If blank on page 1, which most taxpayers will find suitable for their report, is used, it will not be necessary for blanks on pages 2, 3, and 4 to be filled out.)

1. RETURN.

Every corporation, except those noted below under paragraphs Nos. 1-8, having a net income shall make a return under oath,

stating specifically the items of gross income and the deductions and exemptions allowed by this act, and such other facts as the Commissioner of Revenue may require for the purpose of making any computation required by this act. When the Commissioner of Revenue has reason to believe any person or corporation is liable for tax under this act, it may require any such person or corporation to make a return.

The return by a corporation shall be sworn to by the president, vice president, or other principal officer, and by the treasurer or assistant treasurer.

The following organizations shall be exempt from taxation under income tax act:

(1) Fraternal beneficiary societies, orders or associations, (a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (b) providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents.

(2) Building and loan associations and co-operative banks without capital stock, organized and operated for mutual purposes and without profits.

(3) Cemetery corporations and corporations organized for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(4) Business leagues, chambers of commerce, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(5) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

(6) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

(7) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or co-operative telephone companies or like organizations of a purely local character, the income of which consists solely of assess-

ments, dues, and fees collected from members for the sole purpose of meeting expenses.

(8) Farmers', fruit growers', or like organizations, organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them.

Every partnership, having a place of business in the State, shall make a return, stating specifically the items of its gross income and the deductions allowed by this act, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual. The return shall be sworn to by one of the partners.

Every foreign corporation doing business in this State shall pay annually an income tax equivalent to three per cent of a proportion of its entire net income, to be determined according to the following rules:

In case of a company other than companies mentioned in the next succeeding section, deriving profits principally from the ownership, sale, or rental of real estate or from the manufacture, sale, or use of tangible personal property, such proportion of its entire net income as the fair cash value of its real estate and tangible personal property in this State on the date of the close of the fiscal year of such company in the income year is to the fair cash value of its entire real estate and tangible personal property then owned by it, with no deduction on account of incumbrances thereon.

In case of a corporation deriving profits principally from the holding or sale of intangible property, such proportion as its gross receipts in this State for the year ended on the date of the close of its fiscal year next preceding is to its gross receipts for such year within and without the State.

The basis of ascertaining the net income of every corporation engaged in the business of operating a steam or electric railroad, express service, telephone or telegraph business, or other form of public service, when such company is required to keep records according to the standard classification of accounting of the Interstate Commerce Commission, shall be the "net operating income" of such corporations as shown by their records kept in accordance with that standard classification of accounts.

when their business is wholly within this State, and when their business is in part within and in part without the State their net income within this State shall be ascertained by taking their gross "operating revenues" within this State, including in their gross "operating revenues" within this State the equal mileage proportion within this State of their interstate business and deducting from their gross "operating revenue" the proportionate average of "operating expenses," or "operating ratio," for their whole business, as shown by the Interstate Commerce Commission standard classification of accounts. From the net operating income thus ascertained shall be deducted "uncollectible revenue," and taxes paid in this State for the income year, other than income taxes and war profits and excess profits taxes, and the balance shall be deemed to be their net income taxable under this act.

All returns shall be made between January 1 and March 15.

Each return, together with the check covering tax due should be mailed to the Commissioner of Revenue, Raleigh, or handed to a Deputy Commissioner of the State Department of Revenue.

If any taxpayer fails to file a return of income or pay the tax, if any due, within sixty days of the time required under the provisions of the Revenue Act, the tax shall be doubled, and such double tax shall be increased by 1 per cent for each month or fraction of a month from the time the tax was originally due to the date of the payment.

2. DEFINITIONS.

Gross Income: The words "Gross Income" include gains, profits, and income derived from salaries, wages, or compensation of personal service of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also, from interest, rent, dividends, securities, or the transactions of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

The words "Gross Income" do not include the following items, which shall be exempt from taxation under this act:

(a) The value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included in gross income).

(b) Interest upon the obligations of the United States or its possessions, or of the State of North Carolina.

Net Income: The words "Net Income" mean the gross income of the taxpayer, less the deductions allowed (see page 2).

Tax Year: The words "Tax Year" mean the calendar year in which the tax is payable.

Income Year: The words "Income Year" mean the calendar year, or the fiscal year, upon the basis of which the net income is computed. (If no fiscal year has been established, then the calendar year.)

Depletion—Depreciation: For the present, the State Department of Revenue has adopted the same rulings in reference to depletion and depreciation as adopted by the United States Government.

3. DEDUCTIONS.

Deductions allowed from gross incomes are enumerated on page 2 of the blank, numbered 1 to 10, inclusive.

Items Not Deductible: The following items are not deductible from gross incomes:

(a) Personal living or family expenses.

(b) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate.

(c) Any amount expended in restoring property for which an allowance is or has been made.

(d) Premiums paid on any life insurance policy.

IF THIS REPORT IS NOT RECEIVED BY MARCH 15TH,
PENALTY WILL BE AUTOMATICALLY IMPOSED
AND POSITIVELY ENFORCED

State Department of Revenue

Annual Report

From

BANKS, CORPORATIONS, FOREIGN OR DOMESTIC, FIRMS
OR INDIVIDUALS, AS REQUIRED BY SECTION 402,
REVENUE ACT, 1921, COPY OF WHICH
IS SHOWN BELOW.

(Be sure to insert name and address of Bank, Corporation, Firm,
Company, or Individual)

(Name of bank, corporation, firm, company, or individual)
of -----, County of -----
(Postoffice address)

Section 402, Revenue Act, 1921: Every individual, partnership, corporation, joint-stock Company or association or insurance company, being a resident or having a place of business in this State, in whatever capacity acting, including lessee or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the State or any political subdivision of the State, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income, amounting to \$1,000 or over, paid or payable during any year to any taxpayer, shall make complete return thereof to the State Department of Revenue, under such regulations and in such form and manner and to such extent as may be prescribed by it.

(Signature)

Personally appeared before me -----,
(Title)

of -----
(Insert name of bank, corporation, firm, company, partnership, or
individual, and official connection therewith)

who, being duly sworn, says that, according to the best of his knowledge and belief, the attached reports are correct, as required to be made as of January 1st, 1922, under the provisions of section 402, Revenue Act, 1921.

My commission expires.....192.....

Witness my hand and seal, this....day of.....1922.

Notary Public.

[SEAL]

INFORMATION AT THE SOURCE, 1921

Report of Income of \$1,000 or More Paid During Calendar Year 1921
Salaries, Wages, Rent, Interest, or Other Fixed or Determinable Gains,
Profits, and Income (Also Distributions to Beneficiaries of Estates and
Members of Partnerships and Personal Service Corporations)

TO WHOM PAID (Names must be printed or written plainly):

Name

Street City

If payee is an individual, is he married?.....

Kind of Income Paid	Amount	
Salaries, wages, fees, commissions, etc.....	\$.....
Rent	\$.....
Interest on notes, mortgages, etc.....	\$.....
Premiums and annuities	\$.....
Fiduciary distribution	\$.....
Partnership or personal service corporation profits, earnings, etc.	\$.....

BY WHOM PAID

Name

City

RESOLUTION DESIGNATING BANK AS DEPOSITORY.

BE IT RESOLVED BY (stockholders or directors, as case may be) of the ----- Company:

1. That ----- Bank of -----, N. C., be, and it is hereby, designated and appointed as the depository of the funds of this company.

2. That all moneys of this company shall be deposited in said Bank in the name of the Company, and shall be withdrawn therefrom only upon a check signed in the name of the Company by the Secretary and Treasurer and countersigned (if a counter-

signature be required) by the President (or other officer directed to countersign). That the said Bank shall not honor any check drawn otherwise than as provided herein.*

3. That ----- is the Secretary and Treasurer, and-----
----- is President (or other counter-signing officer) of this Company; and that whenever there shall be a change in either of said offices, notice thereof shall be given to said Bank.

4. That a copy of this Resolution, duly certified, shall forthwith be delivered to said Bank.

CERTIFICATE OF RESOLUTION DESIGNATING BANK AS DEPOSITORY.

We ----- President, and ----- Secretary and Treasurer of ----- Company, do hereby certify that the foregoing is a true copy of a resolution adopted at a meeting of (directors or stockholders, as the case may be) of ----- Company, held on the ---- day of ----- 192----. That said meeting was called in accordance with and in the manner provided for by the By-Laws of this Company; and that every (director or stockholder) was duly notified of said meeting; and the foregoing resolution was regularly adopted and has been inscribed upon the records of this company, and is now in full force and effect.

(Corporate Seal Here)

-----,
President.

-----,
Secretary & Treasurer.

NOTE: Whenever any important action, not within the usual business of the Company, and involving a transaction of a continuing character, is taken, it would be well to adopt a resolution similar in form to the above, and to furnish the other party a certified copy of the same.

The foregoing form of certificate of resolution can be used in any cases where a certificate of a resolution is necessary or desired.

**RESOLUTION OF DIRECTORS RESERVING A PORTION OF
THE SURPLUS EARNINGS AS ADDITIONAL WORKING
CAPITAL AND DECLARING DIVIDENDS FROM
REMAINDER OF SUCH EARNINGS.**

BE IT RESOLVED by the Directors of _____ Company:

1. That of the surplus earnings of _____ Company, for the period of _____ months, ending on the _____ day of _____ 19____, the sum of _____ Dollars is hereby reserved for additional working capital.

2. That of the remainder of the surplus earnings of said period, a dividend of _____ dollars on each share of the issued and outstanding capital stock of this company is hereby declared, payable on the _____ day of _____ 19____, to stockholders of record, as shown by the stock books of this company on the _____ day of _____ 19____.

**RESOLUTION OF STOCKHOLDERS APPROVING, RATIFY-
ING AND CONFIRMING THE ACTION OF THE BOARD OF
DIRECTORS IN RESERVING A PORTION OF THE EARN-
INGS OF THE COMPANY AS ADDITIONAL WORKING
CAPITAL, WITHOUT PRIOR EXPRESS AUTHORITY.**

WHEREAS, the board of directors of this company has heretofore from time to time, without prior express authority, set aside and reserved portions of the earnings of this company as additional working capital;

AND WHEREAS, the said acts of the board of directors have been advantageous to and have subserved the best interests of this company; and the stockholders desire to register their approval of the said acts of the board of directors:

NOW, THEREFORE, BE IT RESOLVED, by the stockholders of this company: That the acts heretofore done by the board of directors of this company in setting aside a portion of the earnings of this company as additional working capital, without prior express authority therefor, are hereby ratified, approved and confirmed as fully, and to the same extent as if authority thereto had been duly conferred upon said board of directors before said acts were done.

CREDITORS' AGREEMENT AS SUBSTITUTE FOR BANKRUPTCY AND RECEIVERSHIP.

STATE OF _____ }
COUNTY OF _____ }

-----192-----

THIS AGREEMENT, made this-----day of-----,
192-----, by and between-----,
a corporation existing under the laws of-----,
hereinafter designated as the "Company," party of the first part;
-----, hereinafter designated
as the "Officers," and-----,
a former stockholder of the company, who is liable as endorser
for certain debts of the company, parties of the second part; and
such holders of claims and demands against the company as shall
become parties hereto, hereinafter designated as the "Creditors,"
parties of the third part, WITNESSETH:

WHEREAS, the company is now indebted to sundry individuals,
firms and corporations in various amounts, and on account of the
low price of cotton, financial stringency and panic conditions now
prevailing in this section, is unable to realize upon its assets so as
to pay its obligations, or raise sufficient funds to continue the
operation of its mercantile business for the present year, and

WHEREAS, for the same reasons, the parties of the second
part who have endorsed and become liable upon various notes
and other obligations contracted by the company, are unable to
realize upon their assets in an amount sufficient to discharge their
obligations to the creditors, and

WHEREAS, unless an arrangement can be perfected whereby
the creditors will extend the time for the payment of debts due
them by the company, it will be placed in the hands of receivers,
or thrown into bankruptcy, in which event all parties in interest
would sustain a heavy loss, and

WHEREAS, it is to the mutual interest of all parties to this
agreement that the company be continued as a going concern to
preserve and conserve its assets and good will, and to that end it
is necessary that this agreement be executed.

NOW THEREFORE, in consideration of the premises, and of
the benefits and advantages which will accrue to each of the par-
ties hereto from the execution of this agreement, and in further

consideration of the sum of One Dollar (\$1.00) to each of the parties hereto in hand paid by the other, receipt of which is hereby acknowledged the parties hereto, each for itself or himself, have mutually contracted and agreed and do hereby mutually contract and agree, as follows:

FIRST: That-----

hereinafter designated as the "Trustees," shall be and they are hereby appointed as trustees to represent such existing creditors of the company as shall become parties to this agreement, and to direct the management, operation and conduct of the mercantile business operated by the company at-----, during the continuance of this agreement, and said trustees shall have the powers and shall perform all the duties hereinafter specified and set forth. In case of the resignation or inability to serve on the part of any trustee, the remaining trustees shall fill the vacancy and appoint a successor, and the person so chosen shall have the same powers as though named as trustee in this instrument. As soon as practicable, after their acceptance of the trust hereby created, it shall be the duty of said trustees to appoint an agent, which agent shall, under the supervision, direction and control of the trustees, take active charge of the mercantile business of the company, and of all its property and affairs, and continue to operate and conduct the same, with the co-operation and assistance of the officers, as herein provided; and said trustees shall have full power and authority to determine, define and limit the authority and powers of such agent in all respects where such power and authority is not specifically set forth herein, and said agent shall hold his position at the will and pleasure of the trustees who may remove him at any time and appoint his successor. Said agent shall give bond in the penal sum of \$25,000.00, payable to the trustees, conditioned for the faithful performance of his duties and the proper accounting for all moneys, property and things of value as shall come into his possession under his trust; and the premium on said bond shall be paid as operating expenses.

SECOND: It shall be the duty of the trustees, and the agent acting under their direction, to take actual and active charge and control of all the property and assets of the company, in-

cluding its books, papers and records; and they shall continue to operate the mercantile business of the company during the continuance of this agreement. They shall have power and authority to employ necessary clerical assistance, and pay for necessary legal service, including reasonable counsel fees in connection with this agreement and in adjusting the financial troubles of the company; they shall sell in the usual course of trade the goods and merchandise of the company and receive payment therefor; to extend such credit to customers as they, in their discretion, may approve; to purchase and pay for such goods, merchandise and fertilizer as may be necessary to properly operate the business; to collect and receive payment of outstanding accounts, claims, demands and choses in action due the company; to make settlements and compromises, accept security, grant extensions; and in general they shall have full power and authority to do any and all things necessary to be done in the conduct of the business as a going concern; and the agent, with the written consent and approval of the trustees, may borrow money if necessary in the proper operation of the business. The trustees and the agent shall be liable to all parties concerned for the utmost diligence and good faith, but shall not be liable for mistakes or errors in matters of judgment, opinion or policy. The trustees shall proceed to designate one or more depositories for all moneys coming into the treasury of the company, and no funds belonging to the company shall be paid out or disbursed except by check upon a designated depository, which check shall be drawn in the name of the company, signed by its treasurer, and countersigned by the agent, and a copy of this agreement shall be furnished to the depository.

THIRD: The officers, that is-----

-----, shall continue to perform the duties heretofore performed by them and shall receive for salary and as living expenses the following amounts which shall be charged as a part of operating expenses, to-wit:-----

-----per month, and-----
per month. It shall be their duty to work in close harmony and concert with the trustees and the agent, and all parties concerned shall co-operate and work together and in harmony to the end that the assets and good will of the company may be con-

served and the debts due the creditors be paid as soon as practicable.

FOURTH: The trustees or the agent by their discretion shall have power and authority to make such purchases of goods, merchandise and fertilizer as may be necessary to continue the operation of the mercantile business of the company, and may incur liabilities on that account, or on account of money borrowed with the written approval of the trustees, as may be necessary in the proper conduct of the business; and any and all liabilities so contracted in the purchase of goods, wares, merchandise, fertilizer, or for money borrowed, shall have a preferential right of payment out of the assets of the company before payment shall be made to the creditors upon debts heretofore contracted; and all the property and assets of the company are hereby pledged for the payment of such debts as may be contracted during the continuance of this agreement in the way and manner as herein provided. Parties from whom goods, merchandise or fertilizer is purchased, or from whom money may be borrowed, shall be under no duty or responsibility with respect to whether such purchases are necessary to be made, nor shall it be their duty to see the proper application thereof, but their duty shall be fully discharged upon supplying goods, or furnishing the money. The trustees or agent shall have power to pay all necessary items of freight, drayage, interest, and other necessary items as a part of operating expenses.

FIFTH: It shall be the duty of the trustees and the agent, for and on behalf of the company, to purchase and furnish to the officers, that is, _____, for the use of themselves and their tenants, to enable them to make a crop for 192____ upon the lands hereinafter described, such advances in cash, supplies, merchandise and fertilizer as they shall respectively require to enable them to make a crop for the year 192____ upon the lands hereinafter described, not exceeding, however, the quantities and amounts hereinafter specified in this section. All such cash, advances, supplies and fertilizer so furnished shall be charged upon the books of the company to the officer who purchases same, and the officers hereby contract and agree to pay for all cash, advances, supplies, and fertilizer furnished to them as herein provided, on or before the _____ day of _____, 192___. The officers further agree that all cash, advances, supplies and fertilizer furnished

them hereunder shall be used in making crops upon the lands hereinafter described, and not otherwise. The cash, advances, supplies and fertilizers to be furnished to the respective officers shall not exceed the following quantities and amounts, and shall be used solely in connection with the making of crops of 192____, upon the lands hereinafter described, that is to say:

(A)_____ shall be furnished with not exceeding one hundred and twenty-five (125) tons of fertilizer and not exceeding \$_____ in cash, to enable him to make a crop upon the following lands:

SIXTH: In consideration of the fertilizer and supplies, etc., to be furnished to them as hereinbefore provided in section five hereof, _____ hereby respectively gives and grants to the company an agricultural lien upon all and singular crops to be raised during 192____, upon the lands to be cultivated by each respectively as hereinbefore described in paragraph five hereof. They severally and respectively agree that they will properly cultivate and harvest said crops, and that they will each pay the amount due the company for fertilizer, cash, advances and supplies, on or before the_____ day of _____, 192____. If on or before the_____ day of _____, 192____, said officers or any of them should fail to pay the amounts due by them respectively for such fertilizer, cash, advances and supplies, then they agree to deliver all of said crops to the company at _____, and the company may proceed to foreclose this lien as is provided by article 9 of chapter 49 of the Consolidated Statutes of North Carolina; and it is agreed that the company shall be entitled to and shall have all rights, powers and privileges with respect to the crops to be grown upon all of the said lands for 192____ as are conferred upon persons furnishing agricultural supplies under lien by article 9 of chapter 49 of the Consolidated Statutes of North Carolina. All fertilizer and supplies furnished to the officers under this instrument shall be furnished at cost. The officers further agree that all crops grown upon said lands in 192____ shall be sold with the approval of the

trustees or agent, and the proceeds applied first to the payment of the indebtedness due the company for fertilizer and supplies and the surplus shall be paid and applied upon indebtedness now due by the company and secured by their endorsement, after deducting reasonable living expenses.

SEVENTH: The officers, that is to say, -----, further contract and agree, in consideration of the extension of time granted to them under this contract, as well as the other considerations moving to them respectively hereunder, that they **WILL NOT EXECUTE**, endorse or become liable upon any note or other obligation for any other person, firm or corporation, except in renewing endorsements heretofore made or liabilities heretofore contracted except for current ordinary expenses in the usual and ordinary operation of their farming business; that they will not convey, mortgage, or place any lien or encumbrance upon any lands or property now owned by them until the indebtedness of the company upon which they are now liable as endorsers, or otherwise, or any extensions or renewals thereof, have been fully paid and satisfied; that they will not confess any judgment or do anything which would give any preference to any creditor holding any note or obligation upon which they are liable; and that if the indebtedness of the company upon which they or any of them are liable is not paid by the ----- day of -----, 192-----, or is not paid by the time when this agreement ceases to be effective, they will not do, or allow anything to be done, which would give any creditor of theirs, or of any of them any preference or advantage over any other creditor. Said officers further agree that they shall remain liable upon all notes or obligations of the company for which they are now liable, and they hereby consent and agree to the extension of time hereby granted the company under this instrument, and they agree to continue and remain bound upon all of the indebtedness of the company upon which they are now liable, and that the extension of time granted the company hereby shall not operate to release or discharge them from liability, and that they shall continue liable and bound, as now, until said debts are paid and satisfied in full.

EIGHTH: Each of the creditors, parties hereto, shall, as of the date of this agreement, surrender to the company all evidences of indebtedness of the company to such creditors, if any, and the company shall execute and deliver to such creditors a note for the

amount of his or their indebtedness as of the date of this agreement, which note shall be payable on or before the-----day of -----, 192-----, and shall bear interest from date at the rate of 6 per cent per annum.

PROVIDED, however, that if the creditor banks, or other creditors, on account of peculiar conditions, shall desire their notes executed with maturity of ninety days, four months, or other period, then the trustees or the agent shall have power to cause the company to issue notes in favor of such creditors with earlier maturity than -----, 192-----, but any and all creditors to whom any note or notes may be issued, with a maturity earlier than -----, 192-----, hereby contract and agree that upon the maturity of any note at a date earlier than-----, 192-----, then they shall and will accept from the company renewal notes with a final maturity of-----, 192-----, to the end that no creditor shall receive any preference with respect to the final maturity of the notes to be issued by the company hereunder, and no preference with respect to time when payment may be demanded. Each and every creditor shall also be entitled to and shall receive, upon the new notes the same endorsements or guarantees of payment, if any, as are now held by it, him or them; and-----

-----, parties of the second part, hereby contract and agree that they shall continue and remain liable and bound upon all debts and obligations of the company upon which they are now liable or for which they are now bound, and they hereby consent and agree to the extension of time hereby granted to the company, the principal debtor; they also contract and agree that they will endorse all new notes to be given to such creditors as now hold their endorsements or guarantees of payment or of collection. Each creditor shall moreover retain its, his or their respective rights and title, as of the date of this agreement, in and to all property, security, or collateral of any nature, character or description, now held as security for any claim or demand against the company, the purpose and intention of this agreement being to preserve intact, the present rights and title of all creditors with respect to property, collateral, securities, or endorsements, now held by any creditor.

NINTH: On account of peculiar conditions surrounding cer- .

tain debts due by the company, certain of which are secured by mortgage or lien, and the total whereof does not exceed 5 per cent, of the indebtedness due by the company, it is not deemed best for the company or its creditors that such claims be brought within the purview of this agreement, it is therefore contracted that the trustees and agent be authorized to deal with such claims, outside the scope of this agreement, in such way and manner as they, in the exercise of their discretion, shall deem best for the interest of the company and the creditors; and the company and the creditors shall be bound by such action as the trustees may take with respect thereto. Likewise, in case an emergency shall arise, or any situation be presented not specifically covered by this agreement, either as to subject-matter or the way and method of handling, it is agreed that the trustees and agent shall have power and authority to so handle, manage and adjust such emergency or situation as may be deemed by them to be the best for the interest of all parties concerned.

TENTH: On the-----day of-----, 192____, it shall be the duty of the company, the trustees and agent, to submit to the creditors a full and complete financial statement of all operations under this agreement, and of all receipts and disbursements hereunder, and they shall furnish such detailed information as may be requested by any creditor; and after payment of operating expenses, and for merchandise and fertilizer purchased, or money borrowed, the balance of all receipts, from whatever source derived, shall be then and there paid over to the creditors, payment being made ratably and pro rata, and without preferring any creditor over any other creditor, and after deducting all amounts received by any creditor from the sale of collateral held by them, or security or property belonging to them, or after deducting the then-market value of such collateral, property or security, so that each and every creditor will receive his exact pro rata in accordance with the amount of his claim, and in fairness and equity according to the spirit of this agreement. If the entire indebtedness held by the creditors who are parties to this agreement shall not be paid in full, on or before the-----day of-----, 192____, then this agreement shall cease and become of no further effect, and any and all creditors shall then be at liberty to take such action with respect to their several claims as they may be advised. PROVIDED, HOWEVER, that if at the meeting to be held on or

about the-----day of-----, 192---, to receive the report of the trustees and agent of operations under this agreement, it shall then appear that it is to the best interest of all parties concerned that this agreement be extended for another year and until-----, 192---, then if two-thirds in amount of then existing creditors of the company shall vote in favor of such extension, then this agreement shall thereupon and thereby be continued in full force and effect for another year in all respects excepting dates, and as to dates, in that event, the year 192---, shall be substituted for the year, 192---, as used herein.

ELEVENTH: During the continuance of this agreement, no dividends shall be paid to the stockholders of the company, nor shall any payments be made to any officer or stockholder thereof, except for salaries as above provided, nor shall any mortgage, sale or conveyance be made by the company of any of its property or assets, nor shall any lien or encumbrance whatever be placed thereon, save and except as herein provided.

TWELFTH: This agreement shall not become binding or effective until or unless the same is approved and executed by creditors holding at least 90 per cent in amount of the present outstanding indebtedness due by the company, or unless it be so approved and executed within thirty days after the date hereof. Upon its approval by the required percentage of creditors, the trustees shall cause this instrument to be registered in the register's office of-----County, and the registration thereof shall be conclusive evidence that the consent of the requisite percentage of creditors has been secured hereto.

THIRTEENTH: This agreement shall be binding upon the respective parties hereto and their respective heirs, executors, administrators, successors and assigns; and it may be signed in any number of parts or counterparts, and all of the parts or counterparts shall be taken together and deemed one instrument.

IN WITNESS WHEREOF, the party of the first part has caused this agreement to be signed by its president, attested by its secretary, and its corporate seal to be hereto affixed, all by order of its board of directors; the parties of the second part have hereunto set their hands and affixed their seals; and the parties of the third part have signified their execution hereof by

signing his, its or their name, firm or corporate designation, with the amount of their respective claims opposite thereto, all the day and year first above written.

By _____ President.

ATTEST:

Secretary.

(Seal)

(Seal)

(Seal)

Creditors

Name.

Amount

\$ _____

APPENDICES

APPENDICES

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RULES OF PROCEDURE

STATE COURTS

Chapter 156 of the Public Laws 1919, chapter 96 of the Public Laws, Extra Session 1920, and chapter 96 of the Public Laws 1921, are hereby amended so as hereafter to read as follows:

Sec. 1. The summons in all civil actions in the Superior Court shall be made returnable before the clerk at a date named therein not less than ten days nor more than twenty days from the issuance of said writ, and shall be served by delivering a copy thereof to each of the defendants: Provided, that in all cases where service of summons is to be by publication the summons may be made returnable within forty days from the commencement of the action.

Sec. 2. The complaint shall be filed on or before the return day of the summons: Provided, for good cause shown, the clerk may extend the time to a day certain.

Sec. 3. The answer or demurrer shall be filed within twenty days after the return day, or after service of the complaint upon each of the defendants or within twenty days after the final determination of a motion to remove as a matter of right. If the time is extended for filing complaint, then the defendant shall have twenty days after the final day fixed for such extension in which to file the answer or demurrer, or after service of the complaint upon each of the defendants (in which latter case the clerk shall not extend the time for filing answer beyond twenty days after such service): Provided, in cases where the complaint is not served, for good cause shown, the clerk may extend the time to a day certain.

Sec. 4. The reply, if any, shall be filed within ten days after the filing of the answer: Provided, for good cause shown the clerk may extend the time to a day certain.

Sec. 5. If a demurrer is filed the plaintiff may be allowed to amend. If plaintiff fail to amend within five days after notice, the parties may agree to a time and place of hearing the same before some judge of the Superior Court, and upon such agreement it shall be the duty of the clerk of the Superior Court forthwith to send the complaint and demurrer to the judge holding the courts of the district, or to the resident judge of the district, who shall hear and pass upon the demurrer: Provided, if there be no agreement between the parties as to the time and place of hearing the same before the judge of the Superior Court, then it shall be the duty of the clerk of the Superior Court to send the complaint and demurrer to the judge holding the next term of the Superior Court in the county where the action is pending, who shall hear and pass upon the demurrer at that term of the court.

Sec. 6. Upon the rendering of the decision upon the demurrer if either party desire to appeal, notice shall be given and the appeal perfected as is now provided in case of appeals from decisions in term time.

Sec. 7. Within ten days after the return of the judgment upon demurrer, if there is no appeal, or within ten days after the receipt of the certificate from the Supreme Court, if there is an appeal, if the demurrer is sustained the plaintiff may move, upon three days' notice, for leave to amend the complaint. If this is not granted, judgment shall be entered dismissing the action.

Sec. 8. If the demurrer is overruled, answer shall be filed within ten days after the receipt of the judgment, if there is no appeal, or within ten days after the receipt of the certificate of the Supreme Court, if there is an appeal.

Sec. 9. If no answer is filed, the plaintiff shall be entitled to judgment by default final or default and inquiry as authorized by sections 595, 596, and 597 of the Consolidated Statutes of 1919, and all present or future amendments of the said sections; and all judgments by default final shall be duly recorded by the clerk and be docketed and indexed in the same manner as judgments rendered in term, and in all respects be and become judgments of the Superior Court and be of the same force and effect as if rendered in term and before a judge of the Superior Court; and in all cases of judgment by default and inquiry rendered by the clerk, the clerk shall docket the case in the Superior Court at term time for trial upon the issues raised before a jury, or otherwise, as provided by law, and all judgments by default and inquiry shall be of the same force and effect as if rendered in term and before a judge of the Superior Court.

Sec. 10. No judgment shall be entered by the clerk except as herein otherwise provided, except on a first Monday or a third Monday of the month. The liens of all judgments rendered on the same Mondays shall each be of equal priority, and the first and third Mondays shall be held and construed, in determining the priority of judgment liens, as a term of court, and the first day thereof.

Sec. 11. If the plaintiff or plaintiffs shall cause a copy of the complaint to be served upon any of the defendants, either at the time of issuing summons or thereafter, then judgment shall be entered by the clerk as to the defendants served on first or third Monday next after the expiration of time to answer.

Sec. 12. The clerks of the Superior Courts are authorized to enter the following judgments: (a) All judgments of voluntary nonsuit. (b) All consent judgments (judgments coming within the meaning of (a) and (b) may be entered at any time). (c) In all actions upon notes, bills, bonds, stated accounts, balances struck, and other evidences of indebtedness within the jurisdiction of the Superior Court. (d) All judgments by default final and default and inquiry as are authorized by sections 595, 596, 597 of the Consolidated Statutes, and in this act provided. (e) In all cases where the clerks of the Superior Court enter judgment by default final upon any debt secured by mortgage, deed of trust, or other conveyance of any kind, or by a pledge of property, the said clerks of the Superior Court are authorized and empowered to order a foreclosure of such mortgage, deed of trust, or other conveyance, and order a sale of the property so conveyed or pledged upon such terms as appear to be just; and the said clerks of the Superior Court shall have all the power and authority now exercised by the judge of the Superior Court to appoint commissioners to make such sales, to receive the reports thereof, and to confirm the report of sale of or to order a resale, and to that end they are authorized to continue such causes from time to time as may be required to complete the sale, and in the final judgment in said causes they shall order the execution and delivery of all necessary deeds and make all necessary orders disbursing the funds arising from the sale, and may issue writs of assistance and possession upon ten days' notice to parties in possession.

Sec. 13. Pleadings shall be made up and issues joined before the clerk. After pleadings have been so made up and issues joined, the clerk shall forthwith transmit the original papers in the cause to the court at term for trial upon the issues, when the case shall be proceeded with according to the course and practice of the court, and on appeal with the same procedure as is now in force.

Sec. 14. The judge shall, upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, verdict, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect, and may supply an omission in any proceeding. The clerk may hear and pass upon motions to set aside judgments rendered by him, whether for irregularity or under this section, and an appeal from his order on such motion shall lie to the judge at the next term, who shall hear and pass upon such motion *de novo*: *Provided, however*, nothing in this section shall be construed to affect the rights of innocent purchasers for value in foreclosure proceedings where personal service is obtained.

Sec. 15. All motions to remove as a matter of right shall be made before the clerk, who is authorized to make all necessary orders, and an appeal shall lie from such order upon such motion to the judge at the next term, who shall hear and pass upon such motion *de novo*.

Sec. 16. Motions to remove to the Federal Court shall be made before the clerk, and an appeal shall lie from his order to the judge at the next term, who shall hear and pass upon such motion *de novo*.

Sec. 17. If the action is not founded on a contract, or is founded on a contract and the sum demanded exceeds two hundred dollars, a warrant of attachment may be obtained from the judges of the district embracing the county in which the action was begun, or from the clerk of the Superior Court from which the summons in the action issued; and it may be issued to any county in the State where the defendant has property, money, effects, choses in action, or debts due him, and shall be made returnable before the clerk at the same time and place to which the summons is returnable.

Sec. 18. Nothing herein contained shall be construed to prevent the resident judge or the judge holding courts in any district from making such orders and decrees as are now provided in injunctions and other provisional and extraordinary remedies, or from extending the time to answer in all cases upon motion upon five days' notice as to time and place, which are to be fixed by the judge; and the judge in his discretion may in term time allow any amendment of pleadings on file, or allow the filing of any other pleadings in all cases transferred to the civil issue docket for trial.

Sec. 19. Nothing herein contained shall be construed to deprive the clerk of the court, or the parties by agreement, from extending the time for filing the pleadings or perfecting appeals, or agreeing upon the time and place for hearing argument upon the demurrer or other matters, unless otherwise provided by this act.

Sec. 19a. When appeals are taken from judgments of the clerk or judge not made in term time, the clerk is authorized to make any and all necessary orders for the perfecting of such appeals.

Sec. 20. The Supreme Court is hereby vested with the power to prescribe from time to time the modes of making and filing proceedings, actions, and pleadings, and of entering orders and judgments and recording the same, and to prescribe and regulate the practice on appeals to the Supreme Court, and in the trial of actions in the Superior Court, and before referees: *Provided*, no rule or regulation so adopted shall be in conflict with this act or any of the provisions of the Consolidated Statutes of 1919. Such rules as may be adopted by the Supreme Court shall be printed

and distributed by the Secretary of State as are the reports of the Supreme Court.

Ex. 1921, c. 92.

RULES OF PROCEDURE
UNITED STATES DISTRICT COURTS
BOTH DISTRICTS.

FORMULATED BY JUDGES BOYD, CONNOR AND WEBB.

The summons in all civil actions brought in the District Court shall be made returnable at a date named therein, not less than ten days, or more than twenty days, from the issuance of said writ and shall be served by delivering a copy thereof to each of the defendants.

Provided that, in all cases where service of summons has to be made by publication, the summons may be made returnable within forty days from the commencement of the action. The complaint shall be filed in the clerk's office on, or before, the Return Day of the summons:

Provided that, for good cause shown the Judge may extend the time to a day certain;

Provided that, should complaint be not filed in the clerk's office on, or before, the return day of the summons; and

Provided that, the time for filing complaint has not been extended by the Court in writing; it shall be the duty of the clerk, upon written motion of the defendant or his attorneys, to dismiss the action at the cost of the plaintiff.

The answer, or demurrer, shall be filed within twenty days after the Return Day, or within twenty days after the service of complaint, upon each of the defendants, or within twenty days after the final determination of the motion to remove, as a matter of right. If the time is extended for filing complaint, the defendants shall have twenty days after the final day fixed for such extension, in which to file the answer or demurrer, or after service of the complaint upon each of the defendants.

Provided that, where the complaint is not served, and for good cause shown, the judge may extend the time for filing answer or demurrer to a day certain. The reply, if any, shall be filed within ten days after the filing of the answer:

Provided that, for good cause shown the judge may extend the time for filing the reply to a day certain. If a demurrer is filed the plaintiff may be allowed by the judge to amend. If plaintiff fails to amend within five days after notice, the parties may agree upon a time and place for hearing the same before the judge of the district, and upon such agreement it shall be the duty of the clerk forthwith to send the complaint and demurrer to the judge of the district, addressed either to his official residence or such place as he may be, at the time of holding a term of the court, who shall hear and pass upon the demurrer, after five days' notice to counsel for each party.

Provided that, if there be no agreement between the parties as to the time and place of hearing the same before the judge of the district, it shall be the duty of the clerk to send the complaint and demurrer to the judge of the district who shall hear and pass upon the demurrer after five days' notice to counsel for each party. Upon the decision of the demurrer, if either party desire to sue out a writ of error, or appeal, notice shall be given and the writ of error, or appeal, perfected as is now provided in cases of appeal or writs of error from decisions rendered in term.

Within ten days after the receipt of the mandate from the Circuit Court of Appeals, if there be an appeal, or a writ of error and the demurrer be sustained, the plaintiff may move, upon ten days' notice, before the judge, for leave to amend the complaint. If this be not granted, judg-

ment shall be entered upon the pleadings in accordance with the decision of the judge, or the mandate of the Circuit Court of Appeals.

If the demurrer be overruled, answer must be filed within ten days after the receipt of the judgment, if there be no appeal or writ of error within ten days after the receipt of the mandate of the Circuit Court of Appeals, if there be a writ of error or appeal, if the demurrer be sustained. The clerk shall immediately, upon receipt of such mandate, notify counsel for each party of the decision of the Circuit Court of Appeals.

If no answer is filed to the complaint, the plaintiff shall be entitled to judgment by default final, or default and inquiry, in accordance with the character of the cause of action and the course and practice of the court. Judgment by default final shall be duly recorded on his minutes by the clerk, and be docketed and indexed on the judgment docket in the same manner as judgments rendered in term and shall, in all respects, be and become judgments of the court and of the same force and effect as if rendered in term.

In all cases where judgment by default and inquiry shall be entered, the clerk shall docket the case for trial at the next succeeding term of the court upon the issue raised by the pleadings for the jury as provided by law and the cause shall be proceeded with in accordance with the course and practice of the court in such cases.

No judgment shall be entered, except as herein otherwise provided, except on the first Monday of the month next succeeding the Return Day of the summons or the filing of the complaint as hereinbefore provided for. The clerk shall, upon failure of the defendant to file answer, forthwith transmit to the judge of the district the summons, complaint and other papers filed in the cause, together with the judgment drawn by plaintiff's counsel, to be signed and returned forthwith to the clerk.

Liens of all judgments rendered on the same Monday shall each be of equal priority, as if docketed on said first Monday, and the first Monday of each month shall be held and construed in determining the priority of the judgment liens as a term of the court and the first day thereof.

If the plaintiff, or plaintiffs, shall cause a copy of the complaint to be served on any of the days either at the time of issuing the summons or thereafter, judgment shall be entered, as hereinbefore provided, as to the defendants served with a copy of the complaint, on the first Monday next after the expiration of time to answer.

Pleadings shall be made up and issues joined before the clerk. After pleadings have been so made up and issues joined, the clerk shall forthwith enter the case upon the trial docket when further proceedings shall be had in accordance with the course and practice of the court.

Before process shall issue, either in an action at law or in equity, the plaintiff shall file with the clerk a Prosecution Bond, in the sum of \$200.00, with good and sufficient surety.

Provided that, no Prosecution Bond shall be required when the plaintiff or complainant is an officer of this court, or when the suit shall be brought by the United States as plaintiff in interest. (The clause in black face applies only to the Western District.)

Before process shall issue, the plaintiff shall make a deposit with the clerk of this court in the sum of \$25.00, or a greater sum in the discretion of the clerk, to cover the cost to be incurred in behalf of plaintiff.

Before docketing a case removed from a State Superior Court, the clerk of this court shall require of the defendant a deposit of \$25.00 to cover the cost to be incurred in this court in behalf of the defendant.

Before entering appearance of defendant or filing answer of defendant, the clerk of this court shall require of the defendant a deposit of \$25.00 to cover the cost to be incurred in this court in behalf of defendant.

DIVISIONS OF THE UNITED STATES DISTRICT COURTS

LAW AND EQUITY.

EASTERN DISTRICT.

Elizabeth City Division.....	Court at Elizabeth City consists of Camden, Chowan, Currituck, Dare, Gates, Hertford, Pasquotank, Perquimans and Tyrrell Counties.
Laurinburg Division.....	Court at Laurinburg—Bladen, Hoke, Richmond, Robeson and Scotland Counties.
New Bern Division.....	Court at New Bern—Carteret, Craven, Greene, Jones, Lenoir, Pamlico and Onslow Counties.
Raleigh Division.....	Court at Raleigh—Chatham, Cumberland, Durham, Franklin, Granville, Harnett, Johnston, Lee, Moore, Person, Wake, Warren and Vance Counties, and Roanoke Rapids and Littleton Townships in Halifax County.
Washington Division.....	Court at Washington—Beaufort, Hyde, Martin, Pitt, and Washington Counties.
Wilmington Division.....	Court at Wilmington—Brunswick, Columbus, Duplin, New Hanover, Pender and Sampson Counties.
Wilson Division.....	Court at Wilson—Bertie, Edgecombe, Halifax (except that portion included within Roanoke Rapids and Littleton Townships), Nash, Northampton, Wayne and Wilson Counties.

WESTERN DISTRICT.

Asheville Division.....	Court at Asheville—Avery, Buncombe, Clay, Cherokee, Graham, Haywood, Henderson, Jackson, Macon, Madison, Mitchell, McDowell, Polk, Swain, Transylvania and Yancey Counties.
Charlotte Division.....	Court at Charlotte—Anson, Cabarrus, Cleveland, Gaston, Lincoln, Mecklenburg, Rutherford and Union Counties.
Greensboro Division.....	Court at Greensboro—Alamance, Caswell, Forsyth, Guilford, Montgomery, Orange, Randolph, Rockingham, Stokes, Surry and Yadkin Counties.
Statesville and Salisbury Division..	Courts at Statesville and Salisbury—Alexander, Burke, Caldwell, Catawba, Davie, Iredell, Rowan, Stanley and Davidson Counties.
Wilkesboro Division.....	Court at Wilkesboro—Alleghany, Ashe, Watauga, and Wilkes Counties.

ARTICLES OF INCORPORATION
OF
TOBACCO GROWERS' CO-OPERATIVE ASSOCIATION.

We, the undersigned, a majority of whom are residents and citizens of the State of North Carolina, engaged in the production of agricultural products, do hereby voluntarily associate ourselves together for the purpose of forming a co-operative marketing association, without capital stock, under the provisions of the Co-Operative Marketing Act of the State of North Carolina.

I.

The name of this Association shall be TOBACCO GROWERS' CO-OPERATIVE ASSOCIATION.

II.

The purposes for which this Association is formed are:

a. To promote, foster and encourage the business of marketing tobacco co-operatively; to minimize speculation and waste in the production and marketing of tobacco and tobacco products; to stabilize tobacco markets; to handle co-operatively and collectively the problems of tobacco growers;

b. To engage in any activity in connection with the grading, handling, processing, drying, storing, shipping, warehousing, manufacturing, and marketing of tobacco or tobacco products of the Association and of its members; and in the financing of any of said operations;

c. To purchase and sell any tobacco or tobacco products of its members; and to purchase and to sell to its members machinery, equipment or supplies used in any of the above mentioned activities either by the Association or by the members thereof;

d. To borrow money and to make advances to the members of the Association; and to incur indebtedness without limitation;

e. To lend money to the members of the Association, in connection

with any of the said activities, upon any adequate security; and to accept as collateral for any such loans, warehouse receipts, mortgages, or any other kind of property or security permitted by law;

f. To sell, issue, discount or borrow money upon any commercial paper or negotiable instruments, or promissory notes, or warehouse receipts, or mortgages, or bonds, or any other kind of property or security owned by or under the control of the Association;

g. To act as the agent, representative, or broker of its members in any of the above activities;

h. To purchase, or otherwise acquire, and to hold, own, exercise all rights of ownership over, sell, transfer or pledge or guarantee the redemption or retirement of and the payment of dividends or interest on shares of the capital stock, or bonds, or securities of any corporation or association engaged in the processing, or drying, or grading, or storing or shipping, or handling, or manufacturing, or marketing of any tobacco or tobacco products, in furtherance of any of the above mentioned activities.

i. To buy, hold, lease, construct, contract for the use of and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the Association;

j. To acquire, own, develop any interest in patents, trade-marks or copyrights, connected with the handling or manufacturing or marketing of the tobacco or tobacco products of the Association or its members;

k. And to do each and everything necessary, suitable or proper in the judgment of the Directors of this Association, anywhere throughout the world, for the accomplishment of any of the purposes or attainment of any one or more of the objects herein enumerated, or which shall at any time appear conducive to or expedient for the interests or benefit of the Association and the

members thereof and to contract accordingly.

1. Tobacco Growers' Co-operative Association shall make no profits for itself from any of its activities; but all of its operations shall be for the mutual benefit of its members only and shall be co-operative in character.

The operations and activities of this Association shall be limited to activities arising out of the processing, drying, grading, shipping, storing, warehousing, handling, manufacturing, and marketing of the tobacco or tobacco products of the Association and of its members only and to the financing of any of the said operations.

The Association shall not be permitted to buy or sell tobacco except from and for its members only and on a standard co-operative basis. It shall not buy or handle any tobacco whatsoever from non-members; or be permitted to go in the open market to buy tobacco or any tobacco products whatsoever.

m. The Association is expressly forbidden to do anything with the intent or effect of lessening the production or use or consumption of tobacco; but this Association shall do everything within its power to prevent speculation in the handling of tobacco and tobacco products and to secure for its members a fair price for their tobacco or tobacco products in the markets of the world; and do everything reasonable within its powers to stabilize to a fair level downward, the prices to be paid by the ultimate consumers; to increase the sale, use and consumption of tobacco and tobacco products by all possible commercial and merchandising methods; and to use every possible means to improve this supply and extend and increase the demand for tobacco and tobacco products.

n. This Association shall have and exercise all powers, privileges and rights authorized by the law:

of this State and all powers and rights incident thereto.

III.

The place where the principal business of Tobacco Growers' Co-operative Association will be transacted is Raleigh, Wake County, North Carolina.

IV.

The term for which the Tobacco Growers' Co-operative Association is to exist is twenty (20) years from and after the date of incorporation.

V.

Tobacco Growers' Co-operative Association shall be managed by a Board of twenty-five (25) Directors.

The names and residences of those selected to serve for the first year and until their successors shall have been selected and qualified are:

(Their names here follow—omitted).

VI.

Tobacco Growers' Co-operative Association shall not have any capital stock; but shall admit members into the Association upon payment of an entrance fee of three (\$3.00) Dollars and other uniform conditions.

The voting power of the members of this Association shall be equal; and each member shall have one vote only.

The property rights and interests of each member shall be equal; and each member shall have one unit of property rights only.

VII.

The private property of the members shall not be subject to the payment of corporate debts; and no member shall be liable for the debts of the Association to any amount exceeding the unpaid balance of his entrance fee.

IN WITNESS WHEREOF, we have hereunto subscribed our names this 9th day of February, 1922.

(Names here follow, omitted).

(Acknowledgment omitted.)

The charter of North Carolina Cotton Growers' Co-operative Marketing Association is so similar to the above that it is not necessary to include it. The main differences are in the number of directors of each association and in the preparation and sale of cotton and tobacco, and the fact that the tobacco association comprises the states of Virginia, North Carolina, and South Carolina, while the cotton association is confined to North Carolina.

MARKETING AGREEMENT ENTERED INTO BY GROWERS AND ASSOCIATIONS.

TOBACCO ASSOCIATION.

Member's Agreement With the Association.

The Tobacco Growers' Co-operative Association, a nonprofit Association, hereinafter called the Association, first party, and the undersigned Grower, second party agree:

This Is For Co-Operative Marketing

1. The Grower is a member of the Association and is helping to carry out the express aims of the Association for co-operative marketing, for minimizing speculation and waste and stabilizing tobacco markets in the interest of the grower and the public, through this and similar obligations undertaken by other growers.

Grower Sells Tobacco to Association For Five Years.

2. The Association agrees to buy and the Grower agrees to sell and deliver to the Association all of the tobacco produced by or for him or acquired by him as landlord or lessor, during the years 1922, 1923, 1924, 1925 and 1926.

If You Have a Crop Mortgage—That Tobacco Does Not Have to Go to the Association.

3. The Grower expressly warrants that he has not heretofore contracted to sell, market, or deliver any of his said tobacco to any person, firm, or corporation, except as noted at the end of this agreement. Any tobacco covered by such existing contracts or crop mortgage shall be excluded from the terms hereof for the period and to the extent noted.

The Association Tells You Where to Deliver.

4. (a) All tobacco shall be delivered at the earliest reasonable time

COTTON ASSOCIATION.

The North Carolina Cotton Growers' Co-operative Association, a nonprofit association, with its principal office at Raleigh, hereinafter called the Association, first party, and the undersigned, Grower, second party, agree:

1. The Grower is a member of the Association and is helping to carry out the express aims of the Association for co-operative marketing, for minimizing speculation and waste and for stabilizing cotton markets in the interest of the grower and the public, through this and similar organizations undertaken by other growers.

2. The Association agrees to buy and the Grower agrees to sell and deliver to the Association all of the cotton produced or acquired by or for him in North Carolina during the years 1922, 1923, 1924, 1925, and 1926.

3. The Grower expressly warrants that he has not heretofore contracted to sell, market or deliver, any of his said cotton to any person, firm or corporation, except as noted at the end of this agreement. Any cotton covered by such existing contracts or crop mortgage shall be excluded from the terms hereof for the period and to the extent noted.

after picking or curing, to the order of the Association, at the warehouse or plant controlled or specified by the Association; or at the nearest warehouse, if the Association controls or specifies no warehouse or plant in that immediate district; or by shipment, as directed, to the Association; and by delivery to the Association of the endorsed warehouse or other receipts or bills-of-lading properly directed.

Poor Tobacco Is Penalized.

(b) Any deduction or allowance or loss that the Association may make or suffer on account of inferior grade, quality, or condition at delivery, shall be charged against the Grower individually.

Association Will Try to Standardize Methods.

(c) The Association shall make rules and regulations and provide inspectors or graders to standardize and grade the quality, and method and manner of handling, curing, and shipping such tobacco; and the Grower agrees to observe and perform any such rules and regulations; and to adopt the grading established by the State and Federal authorities and the Association.

All Tobacco Will Be Pooled For Each Year by Type and Grade.

5. The Association shall pool or mingle the tobacco of the Grower with tobacco of a like type, grade and quality delivered in the same crop year by other Growers. The Association shall classify the tobacco and its classification shall be conclusive.

The tobacco delivered in any crop year to any point at the order of the Association, shall be handled in one major pool; and the minor pools shall be by type and grade.

Association Will Resell All Tobacco and Pay Net Proceeds to Grower—Costs of Operation and Overhead Will Be Deducted, But the Association Forbidden to Make Any Profit For Itself.

6. The Association agrees to resell such tobacco, together with or

if the lien-holder so enforces his right to possession.

4. (a) All cotton shall be delivered at the earliest reasonable time after picking or ginning, to the order of the Association, at the warehouse controlled by the Association, or at the nearest public warehouse, if the Association controls no warehouse in that immediate district; or by shipment as directed, to the Association and by delivery of the endorsed warehouse receipts or bills-of-lading properly directed.

(b) Any deduction or allowance or loss that the Association may make or suffer on account of inferior grade, quality, or condition at delivery, shall be charged against the Grower individually.

(c) The Association shall make rules and regulations and shall provide inspectors or graders or classifiers to standardize, grade and class the quality of and the method and manner of handling, pressing and shipping such cotton; and the Grower agrees to observe and perform any such rules and regulations and to accept the grading established by the State and Federal authorities and the Association.

5. The Association shall pool or mingle the cotton of the Grower with the cotton of a like variety, grade and staple delivered by other growers. The Association shall classify the cotton and its classification shall be conclusive. Each pool shall be for a full season.

6. The Association agrees to resell such cotton, together with cotton of like variety, grade and staple, delivered by other growers under

bacco of like type, grade and quality delivered by other Growers under similar contracts, at the best prices obtainable by it under market conditions, and to pay over the net amount received therefrom (less freight, insurance, and interest), as payment in full to the Grower and Growers named in contracts similar hereto, according to the tobacco delivered by each of them, after deducting therefrom, within the discretion of the Association, the costs of maintaining the Association and of handling, grading and marketing such tobacco; and of reserves for credits, and other general commercial purposes (said reserves not to exceed 1 per cent of the gross resale price). The annual surplus from such deductions must be prorated among the Growers delivering tobacco in that year on the basis of deliveries.

Every Grower Gets the Same Amount For the Same Type, Quality and Quantity of Tobacco.

7. The Grower agrees that the Association may handle, in its discretion, some of the tobacco in one way and some in another; may sell some upon delivery; may cure or process or manufacture all or any portion thereof; but the net proceeds of all tobacco or tobacco products of like type, quality, and grade, less charges, costs and advances, shall be divided ratably among the growers in proportion to their deliveries to each pool, payments to be made from time to time until all the accounts of each pool are settled.

The Association may contract with the owners of re-drying plants to re-dry and store the tobacco delivered by the members of the Association.

The Tobacco Will Be Sold Anywhere—For Export or Otherwise, Where It Will Be Most Profitable.

8. The Association may sell the said tobacco, within or without the United States, directly to manufacturers or exporters or otherwise, at such time and in such form and

similar contracts, at the best prices obtainable by it under market conditions, and to pay over the net amount received therefrom (less freight, insurance, and interest), as payment in full to the Grower and Growers named in contracts similar hereto, according to the cotton delivered by each of them, after deducting therefrom, within the discretion of the Association, the costs of maintaining the Association, and costs of handling, grading and marketing such cotton; and of reserves for credits and other general purposes (said reserves not to exceed two per cent of the gross resale price). The annual surplus from such deductions must be prorated among the Growers delivering cotton in that year on the basis of deliveries.

7. The Grower agrees that the Association may handle, in its discretion, some of the cotton in one way and some in another; but the net proceeds of all cotton of like quality, grade and staple, less charge, costs and advances, shall be divided ratably among the Growers in proportion to their deliveries to each pool, payments to be made from time to time until all the accounts of each pool are settled.

8. The Association may sell the said cotton, within or without this state, directly to spinners or exporters, or otherwise, at such times and upon such conditions and terms as it may deem profitable, fair and advantageous to the Growers; and it may sell all or any part of the cotton to or through any agency, now established or to be hereafter established, for the co-operative marketing of the cotton of Growers in

upon such conditions and terms as it may deem profitable, fair and advantageous to the growers; and it may sell all or any part of the tobacco with or through any other agency hereafter established, for the co-operative marketing of the tobacco of growers in other states throughout the United States, under such conditions as will serve the joint interest of the growers and the public; and any proportionate expenses connected therewith shall be deemed marketing costs under paragraph 6.

The Association Can Raise Money to Make First Payment to Growers.

9. The Grower agrees that the Association shall borrow money in its name on the tobacco, through drafts, acceptances, notes or otherwise, or on any warehouse receipts or bills-of-lading or upon any accounts for the sale of tobacco or on any commercial paper delivered therefor. The Association shall prorate the money so received among the growers equitably, as it may determine, for each district and period of delivery.

Officers or Plants Wherever They Are Needed.

10. The Association may establish selling offices, warehouses, plants, marketing, statistical or other agencies in any place.

You Can Stop Growing Tobacco If You Wish.

11. The Grower shall have the right to stop growing tobacco and to grow anything else at any time at his free discretion; but if he produces any tobacco, or acquires or owns any interest in any tobacco, as landlord or lessor, during the term hereof, it shall all be included under the terms of this agreement and must be sold only to the Association.

You Do Not Have to Deliver Any Particular Amount.

12. Nothing in this agreement shall be interpreted as compelling the Grower to deliver any specified

other states throughout the United States, under such conditions as will serve the joint interest of the Growers and the public; and any proportionate expense connected therewith shall be deemed marketing costs under paragraph 6.

9. The Grower agrees that the Association shall borrow money in its name on the cotton, through drafts, acceptances, notes or otherwise, or on any warehouse receipt or bills-of-lading or upon any accounts for the sale of cotton or on any commercial paper delivered therefor. The Association shall prorate the money so received among the Growers equitably, as it may determine, for each district and period of delivery.

The Association agrees to accept drafts drawn against it by the Grower for any amount specified and determined by it, upon delivery of cotton hereunder, and to assist the Grower to discount such drafts, secured by the warehouse receipts, through the most advantageous banking system.

10. The Association may establish selling offices, warehouses, plants, marketing, statistical, or other agencies in any place.

11. The Grower shall have the right to stop growing cotton and to grow anything else at any time at his free discretion; but if he produces any cotton during the term hereof, it shall all be included under the terms of this agreement and must be sold only to the Association.

12. Nothing in this agreement shall be interpreted as compelling the Grower to deliver any specified quantity of cotton per year; but he shall deliver all the cotton produced or acquired by or for him as landlord or lessor.

13. (a) This agreement shall be binding upon the Grower as long as he produces cotton directly or indirectly, or has the legal right to exercise control of any commercial

quantity of tobacco each year; but he shall deliver all the tobacco produced by or for him.

You Deliver All the Tobacco You Raise.

13. (a) This agreement shall be binding upon the Grower as long as he produces tobacco directly or indirectly, or has the legal right to exercise control of any commercial tobacco or any interest therein as a producer or landlord during the term of this contract.

(b) If this agreement is signed by the members of a co-partnership it shall apply to them and each of them individually in the event of the dissolution or termination of the said co-partnership.

**You May Make a Crop Mortgage—
The Association Will Try to Help
You Secure Standard Terms.**

(c) If the Grower places a crop mortgage upon any of his crops during the term hereof, the Association shall have the right to take delivery of his tobacco and to pay off all or part of the crop mortgage for the account of the Grower and to charge the same against him individually.

The Grower shall notify the Association prior to making any crop mortgage and the Association will assist the Grower in any such transaction as far as it deems proper.

Statistics Are Needed.

14. From time to time the Grower agrees to mail to the Association any statistical data requested, on the forms provided for that purpose by the Association.

All Contracts Are Alike.

15. This agreement is one of a series generally similar in terms comprising with all such agreements, signed by individual growers, or otherwise, one single contract between the Association and the said Growers annually and individually obligated under all of the terms thereof. The Association shall be deemed to be acting in its own name for all such growers in any action or legal proceedings on or arising out of this contract.

cotton or any interest therein during the terms of this contract.

(b) If this agreement is signed by the members of a copartnership it shall apply to them and each of them individually in the event of the dissolution or determination of the said copartnership.

(c) If the Grower places a crop mortgage upon any of his crops during the term hereof, the Association shall have the right to take delivery of his cotton and to pay off all or part of the crop mortgage for the account of the Grower and to charge the same against him individually.

The Grower shall notify the Association prior to making any crop mortgage, and the Association will advise the Grower in any such transactions.

14. From time to time the Grower agrees to mail to the Association any statistical data requested, on the forms provided for that purpose by the Association.

15. This agreement is one of a series generally similar in terms, comprising with all such agreements, signed by individual Growers, or otherwise, one single contract between the Association and the said Growers, mutually and individually obligated under all of the terms thereof. The Association shall be deemed to be acting in its own name, for all such Growers, in any action or legal proceedings on or arising out of this contract.

16. (a) The Grower hereby expressly authorizes the Association to deliver to any warehousing corporation organized for co-operation with this Association, any or all of his cotton for handling, processing or storing, and to charge against his cotton the prorated costs of such services and his prorated share of the funds necessary to create a reserve, equivalent to one class of its preferred stock annually, plus bonus, to retire the said class, and to pay the interest on advances and the dividends on all outstanding preferred stock.

The Grower Authorizes the Association to Build Curing or Re-Drying Plants If It Needs Them.

16. (a) The Grower hereby expressly authorizes the Association to deliver to any warehousing or other corporation organized for co-operation with this Association, any or all of his tobacco for handling, processing, or manufacturing, or storing; and to charge against his tobacco and his prorated share of the funds necessary to create a reserve equivalent to one class of its preferred stock annually plus bonus, to retire the said class; and to pay the dividends on all outstanding stock thereof.

(b) The Grower shall be charged for such deductions only on account of warehouses or plants within his district or within his benefit, as determined by the Association; and for such deductions the Grower shall receive a proportionate interest in such corporation.

Any Old Crop Tobacco May Be Delivered to the Association to Sell.

17. If the Grower has on hand on July 1, 1922, any tobacco of the 1920 or any crops, free of liens and capable of delivery, he shall deliver such tobacco to the Association, as it may direct, to be graded by the Association, and marketed by it, in pools wholly separate from all other deliveries hereunder, but generally in the manner here set forth.

Do Not Break the Contract—This Is Expensive.

18. (a) Inasmuch as the remedy at law would be inadequate; and inasmuch as it is now and ever will be impracticable and extremely difficult to determine the actual damage resulting to the Association should the Grower fail so to sell and deliver all of his tobacco, the Grower hereby agrees to pay to the Association for all tobacco delivered, consigned or marketed or withheld by or for him other than in accordance with the terms hereof, the sum of five cents

(b) The Grower shall not be charged for such deductions except on account of warehouses within his immediate district, as determined by the Association; and for such deductions the Grower shall receive a proportionate interest in such warehouses. Terminal plants shall be chargeable against all Growers.

17. If the Grower has on hand any cotton of the 1921 or previous crops free of liens and capable of delivery, he shall deliver such cotton to the Association as it may direct, to be graded by the Association and marketed by it in pools wholly separate from all other deliveries here made but generally in the manner hereinabove set forth.

18. (a) Inasmuch as the remedy at law would be inadequate, and inasmuch as it is now and ever will be impracticable and extremely difficult to determine the actual damage resulting to the Association, should the Grower fail so to sell and deliver all of his cotton, the Grower hereby agrees to pay to the Association for all cotton delivered, sold, consigned, withheld or marketed by or for him, other than in accordance with the terms hereof, the sum of 5 cents a pound, as liquidated damages for the breach of this contract, all parties agreeing that this contract is one of a series dependent for its true value upon the adherence of each and all of the growers to each and all of the said contracts.

(b) The Grower agrees that in the event of a breach or threatened breach by him of any provision regarding delivery of cotton; the Association shall be entitled to an injunction to prevent breach or further breach hereof, and to a decree for specific performance hereof; and the parties agree that this is a contract for the purchase and sale of personal property under special circumstances and conditions and that the buyer cannot go to the open market and buy cotton to replace any which the Grower may fail to deliver.

per pound as liquidated damages, averaged for all types and grades of tobacco, for the breach of this contract; all parties agreeing that this contract is one of a series dependent for its true value upon the adherence of each and all of the growers to each and all of the said contracts.

We Will Get His Tobacco Anyway.

(b) The Grower agrees that in the event of a breach or threatened breach by him of any provision regarding delivery of tobacco, the Association shall be entitled to an injunction to prevent breach or further breach thereof and to a decree for specified performance hereof; and the parties agree that this is a contract for the purchase and sale of personal property under special circumstances and conditions, and that the buyer cannot go to the open markets and buy tobacco and replace any which the Grower may fail to deliver.

Violators Pay the Costs of Fighting Them.

(c) If the Association brings any action whatsoever by reason of a breach or threatened breach hereof, the Grower agrees to pay to the Association all costs of Court, costs, for bonds and otherwise, expenses of travel and all expenses arising out of or caused by the litigation and any reasonable attorney's fee expended or incurred by it in such proceedings; and all such costs and expenses shall be included in the judgment and shall be entitled to the benefit of any lien securing any judgment hereunder.

The Contract Is Complete on Its Face.

19. The parties agree that there are no oral or other conditions, promises, covenants, representations or inducements in addition to or at variance with any of the terms hereof; and that this agreement represents the voluntary and clear understanding of both parties fully and completely.

(c) If the Association brings any action whatsoever, by reason of a breach or threatened breach hereof, the Grower agrees to pay to the Association all costs of court, costs for bonds and otherwise, expenses of travel and all expenses arising out of or caused by the litigation and any reasonable attorney's fees expended or incurred by it in such proceedings; and all such costs and expenses shall be included in the judgment and shall be entitled to the benefit of any lien securing any payment thereunder.

19. The Association is expressly authorized to exercise any or all of the grading, inspecting, marketing or other powers or rights granted hereunder through any central agency to be organized for co-ordinating the activities of this and similar co-operative marketing associations in other states. The Association shall, if possible, enter into any contract for such purpose and may agree to pool the products delivered hereunder with products of similar variety, grade and quality delivered to generally similar Associations under marketing agreements substantially the same in effect as this agreement; and to unite with any such Associations in the joint purchase, construction, lease, or use of terminal or other facilities, and to assume obligations therefor.

Any costs of maintaining such central agency shall be prorated among the said Associations on the basis of the gross sale proceeds from the products delivered by them respectively and shall be considered part of the costs and deductions provided for in paragraph 6.

The Association agrees to assist in forming such central agency as soon as three similar Associations are organized in the United States.

Read, considered and signed by the Grower, as of the date determined by the Association Contract, in the State of North Carolina.

Read, considered, and signed at

.....,
this.....day of.....1921

(Do Not Sign Without Reading)

Grower

P. O. Address

Production in 1920 was.....

pounds of.....type....; acres....

Production 1921....lbs...Type....

Acres.....

Read, considered and signed at

.....,
North Carolina, this.....day of
....., 1921.

(Do Not Sign Without Reading)

Grower.....

P. O. Address.....

Production in 1920 was.....

bales.

Production in 1921 was.....

bales.....acres.

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Ex C.W.
8/26/22.

